Supreme Court, U.S.
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NO. 93-

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1993

FEDERACION DE MAESTROS
DE PUERTO RICO
PETITIONER

V.

LABOR RELATIONS BOARD
RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
COMMONWEALTH OF PUERTO RICO

APENDIX TO THE PETITION
FOR A WRIT OF CERTIORARI

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CERTIFIED TRANSLATION

EXHIBIT XV

IN THE COMMONWEALTH OF PUERTO RICO

GENERAL COURT OF JUSTICE

SUPREME COURT

PUERTO RICO TEACHERS FEDERATION	*	
Petitioner	*	Civil No.
Vs.	*	Certiorari
	*	Against
PUERTO RICO LABOR RELATIONS BOARD	*	Judgement Entered by
	*	the
Defendant	*	Honorable
- - - - - - - - - - - - - - - - -	*	Court of Appeals

WRIT OF CERTIORARI

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Certified Court Interpreter
Administrative Office of the
United States Courts

EXHIBIT XVII

CERTIFIED TRANSLATION

IN THE COMMONWEALTH OF PUERTO RICO

GENERAL COURT OF JUSTICE

SUPREME COURT

PUERTO RICO TEACHERS FEDERATION	*	
PETITIONER	*	CIVIL NO.
VS.	*	IN RE: WRIT OF CERTIORARI AGAINST
PUERTO RICO LABOR RELATIONS BOARD	*	JUDGEMENT ENTERED BY THE HONORABLE COURT OF APPEALS
DEFENDANT	*	

- - - - - - - - - - - *

CERTIORARI

TO THE HONORABLE COURT:

Comes now the Puerto Rico Teachers Federation represented by the undersigned

counsel and very respectfully submits the instant writ of certiorari.

I. JURISDICTION OF THIS HONORABLE COURT:

This Honorable Court has jurisdiction to hear the instant writ of certiorari pursuant to Act No. 21 of July 13, 1992; and Article 671 of the Civil Trial Code (32 L.P.R.A. Sec. 3492).

II. INTRODUCTION:

Petitioner herein, Puerto Rico Teachers Federation, prays that the Judgment of April 30, 1993 entered by the Court of Appeals, in Civil Case No.: SNCE 93-0034, Puerto Rico Labor Relations Board Vs. Puerto Rico Teachers Federation, be set aside. Said Judgment, noticed on May 5, 1993, denied the writ of certiorari filed against the Judgment of the Superior Court in Case No. KAC 92-0397 between the same parties. In said Judgment, the Teachers Federation was ordered to bargain

collectively with a Union composed of general employees/and or employees of trust, in violation of the Federal Labor Relations Act, and the Puerto Rico Labor Relations Act.

III. ACCOUNT OF FACTS

1. Petitioner Puerto Rico Teachers Federation is a bona fide organization created under Act No. 134 of July 19, 1960 (3 L.P.R.A. Sec. 702) which encompasses some twelve thousand (12,000) classroom teachers of the Education System. It is recognized by the Department of Education and the Labor Department and is authorized to associate, organize and represent teachers.

2. The objectives of the Puerto Rico Teachers Federation, pursuant to its Constitution and By-Laws are, among others, the following: (a) To foster measures aimed at achieving full separation of the educational system from party politics as an element which assists in offering an education

of excellence, (b) to represent its members so that through collective bargaining and the union struggle it may provide them with effective protection and win higher degrees of social, labor, professional and economic conditions; (c) to act as the teacher's representative at all times in the face of any aggression by the employer and its followers. (d) to promote the teaching of trade unionism at all school levels, as a safeguard of the democratic and constitutional right of workers to organize and negotiate collective bargaining agreements. (e) to succeed in extending to the public employees of Puerto Rico collective bargaining, the right to strike, to picket and other lawful concerted activities, (f) to achieve union unity of teachers.

3. In order to realize the above objectives, the Puerto Rico Teachers

Federation has an Executive Committee composed of fifteen (15) persons:

a. President

b. Vice-President

c. Secretary - Treasurer

d. Secretary of Curriculum & Propaganda

e. Seven (7) Regional Representatives

4. The Teachers Federation has ten (10) Regional Representatives throughout the Island of Puerto Rico. The functions and duties, among others, of each representative is as follows: (a) To carry out the organizational policy of the Teachers Federation; (b) to organize the teachers in their work center (schools); (c) to recruit new Federation members; (d) to present and discuss grievances and cases before the School Principal or representative of the Department of Education; (e) to

maintain close contact and coordination with the Director of the Federation's Department of Organization and Development; (f) to participate in the meetings of the governing bodies of the Federation; (g) to have the right to challenge and revoke, through assemblies or meetings, the decisions of the President or Administrator of the Federation; (h) to belong to the Executive Committee, the Board of Directors, the Delegate Assembly and the General Assembly, which are the organisms that direct all Federation affairs.

5. The Regional Representatives, known in 1988 as "Organizers" petitioned to become unionized under the name of "Puerto Rican Federation of Workers".

6. On July 1, 1988, the "Puerto Rican Federation of Workers" filed a petition with the Labor Relations Board for representative investigation and certification, in which it alleged that a controversy had arisen

concerning the representation of all the organization and development representatives utilized by the Puerto Rico Teachers Federation.

7. On August 23, 1988, the Teachers Federation informed the Labor Relations Board that it did not recognize the Puerto Rican Federation of Workers as a contracting unit **because it was intimately connected to management and because they were employees of trust.**

8. The Labor Relations Board, in connection with the petition, ordered the holding of elections.

9. On October 13, 1988 said election, in which the Union was favored, was held.

10. On March 8, 1989, the Labor Relations Board scheduled a hearing to resolve the refusal to bargain and to recognize the Union.

11. On March 8, 1989, at the start of the aforesaid hearing, the Teachers Federation and the Union informed the examining official that they had subscribed the following stipulation.

STIPULATION

COME NOW the above-captioned parties, who report the following agreements and stipulations:

1. The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and

according to the Board itself, it was established on September 16, 1988, by resolution.

2. The Puerto Rican Federation of Workers and the contracting Unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3. As part of the agreements, the Puerto Rican Federation of Workers shall withdraw the charges pending before the Labor Relations board once the aforesaid conditions are established.

4. So agree the parties, having signed this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

RAMON FUENTES	RENAN SOTO SOTO
President Puerto Rican Federation of Workers	President Puerto Rico Teachers Federation

12. On the basis of said stipulation, the Labor Relations Board, on May 28, 1989, issued [a] "Decision and Certification" in which it recognized the Puerto Rican Federation of Workers as the exclusive represented *[sic]* of the contracting unit. It proceeded to close and file the case on representation.

13. Subsequently, the Union, contrary to the stipulation, required the Teachers Federation to subscribe certain agreements

which for all purposes, are equivalent to negotiating a Collective Bargaining Agreement. The Teachers Federation, relying on the stipulation, refused.

14. On June 21, 1989, in the face of the Teachers Federation's refusal to negotiate, the Union filed a charge against it with the Labor Relations Board.

15. On June 13, 1990, the Examining Official designated by the Labor Relations Board submitted a report in which she recommended the dismissal of the complaint, as she considered that both the Teachers Federation and the Federation of Workers were liable for the unlawful practice imputed. (Exhibit II)

16. On October 31, 1991, the Labor Relations Board issued a Decision and Order, in which it adopted the findings of fact and analysis through page 14 of the Report of the Examining Official. Nevertheless, relying on

the stipulation, it concluded as an issue of law that the Teachers Federation had recognized the Union, [and] ordered the Teachers Federation to bargain collectively with the Union. (Exhibit III).

17. On November 20, 1991, the Teachers Federation submitted a Motion for Reconsideration before the Labor Relations Board. In said writ the herein appellant party reiterated that the members of the Union are intimately linked with management. (Exhibit IV)

18. On December 10, 1991, the Labor Relations Board denied the Motion for Reconsideration filed. (Exhibit V).

19. On March 5, 1992, the [Labor] Relations Board ordered the Teachers Federation to negotiate a collective bargaining agreement with the Union.

20. On July 16, 1992, the Labor Relations Board submitted a petition before

the San Juan Superior Court to enforce the order of March 5, 1992. (Exhibit VI)

21. On September 24, 1992, the Teachers Federation submitted a motion in opposition to the aforenamed petition. (Exhibit VII)

22. On November 13, 1992, the [Labor] Relations Board submitted a reply to the opposition submitted by the herein appellant. (Exhibit VII)

23. On December 2, 1992, the Honorable Superior Court granted the petition of the Labor Relations Board. (Exhibit IX)

24. On December 23, 1992, the Teachers Federation submitted a motion for reconsideration. Which motion was subsequently denied.

25. On January 22, 1993, the Teachers Federation submitted a writ of certiorari before the Honorable Court of Appeals. (Exhibit X)

26. On February 1, 1993, the Labor Relations Board submitted a memorandum in opposition to the issuance of the writ of certiorari. (Exhibit XI)

27. On April 30, 1993, following a series of procedural incidents, the Honorable Court of Appeals denied the writ of certiorari filed. A copy of said Judgment was placed in the case file on May 5, 1993. (Exhibit XII)

IV. ERRORS OF LAW ASSERTED

1. THE HONORABLE COURT OF APPEALS ERRED IN LEAVING IN FORCE AN ORDER OF THE PUERTO RICO LABOR RELATIONS BOARD WHICH CERTIFIES A UNION OF FUNCTIONARIES EXCLUDED FROM THE LAW IN VIOLATION OF: (1) PUBLIC POLICY: (2) THE PUERTO RICO LABOR RELATIONS ACT; THE FEDERAL LABOR RELATIONS ACT.

2. THE HONORABLE COURT OF APPEALS ERRED IN VALIDATING AN ORDER WHICH DENIES APPELLANT THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW

BY DISALLOWING IT FROM PRESENTING EVIDENCE ON THE CHARACTER OF MANAGERIAL EMPLOYEES AND/OR [EMPLOYEES OF] TRUST OF THE UNION MEMBERS.

3. THE HONORABLE COURT OF APPEALS ERRED IN LENDING VALIDITY TO A STIPULATION WHICH IS NULL AND CONTRARY TO THE LOCAL AND FEDERAL LABOR RELATIONS ACT.

V. ARGUMENT OF THE ERRORS OF LAW ASSERTED

1. THE HONORABLE COURT OF APPEALS ERRED IN LEAVING IN FORCE AN ORDER OF THE PUERTO RICO LABOR RELATIONS BOARD WHICH CERTIFIES A UNION OF FUNCTIONARIES EXCLUDED FROM THE LAW IN VIOLATION OF: (1) PUBLIC POLICY: (2) THE PUERTO RICO LABOR RELATIONS ACT; AND THE FEDERAL LABOR RELATIONS ACT.

Pursuant to the: (1) Labor Relations Act, (2) the decisions of the United States Supreme Court, (3) the Puerto Rico Supreme Court and (4) the Honorable Labor Relations Board,

employees who are intimately linked to management, supervisors and [employees] of trust are excluded from the Labor Relations Act. To that effect the Puerto Rico Labor Relations Act in its Article 2 defines the term employer:

> "The term **employer** shall include **executives**, supervisors and **any person who performs activities of an executive nature in the interest of an employer, directly or indirectly,** but shall not include, except in the case of the corporate instrumentalities of the Government of Puerto Rico, as defined below, the government or any political subdivision thereof; provided that it shall include, moreover, any individual, partnership or organization which intervenes in favor of the employing party in any

labor dispute or collective bargaining".

In the present case the Organizers are partners (equivalent to shareholders) of the non-profit organization known as the Puerto Rico Teachers Federation, they pay dues, vote in its elections, may run for elective offices, are entitled to challenge and revoke, through the assemblies, or meetings, the decisions of the President or the Administrator of the Federation functionary *[sic]* named thereby. As representatives of their Region, they belong to the Executive Committee, to the Board of Directors, to the Delegate Assembly and the General Assembly which are the organisms which direct all the affairs of the Federation. The Executive Committee is the supreme authority when the Board of Directors is not in session. The Executive Committee is the organism in charge of formulating the wage policy to be submitted

to the Board of Directors and directs the day to day operations of the Federation and takes part in and passes judgment on the negotiation of collective bargaining agreements. For illustrative purposes only a copy is included of the minutes of the Executive Committee dated January 29, 1989, January 23, 1989; December 29, 1989; January 13, 1990, February 3, 1990 and December 3, 1990 (the latter one handwritten.) (Exhibit XIII)[1]

In the case at bar the exclusion of the Organizers - (Regional Representatives) from the Suitable Unit is justified because they play a role, among other things, in the solution of claims and the fixing of wages.

The law, in defining the term "employee", states that:

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[1] Of fifteen members who comprise the Executive Committee, seven belong to the Union.

> "it shall include any employee and shall not be limited to the employees of one employer in particular..., but shall not include any indivi-dual employed by his/her parents or spouse. The term **shall not include executives or supervisors.**

Executives and supervisors are expressly excluded since said terms are included in the term "employer". See also, JRT v. Acevedo, 78 DPR 540 (1955).

Pursuant to Article 4 of the Puerto Rico Labor Relations Act (29 LPRA 65) only those who are **employees** shall be entitled to form labor unions, as defined above. The Board, pursuant to Article 5 (sec. 66) is authorized to certify a union of executive (managerial) employees or supervisors. Since the Organizers are not employees of the board, it lacks jurisdiction to enter an order requiring

the Federation to recognize and negotiate a collective bargaining agreement with said functionaries. JRM v. JRT, 108 DPR 448 (1979); Leedom v. Kyne, 358 US 184 (1984).

It is crucial in any case of certification of a suitable unit to determine if the positions to be included are supervisory and/or executive or not. **The Board cannot establish a contracting unit constituted by supervisors or executives nor require that a collective bargaining agreement be negotiated with this unit.** This would be an act ultra vires. Nor may a group of supervisors or executives invoke the protection of the law nor file charges of unlawful practice of refusal to bargain because it does not have that right. See NLRB v. Intercity Advertising Co. 190 F2d. 420 (1951); NLRB v. Talladega Cotton, 213 F2d. 209 (1954); JRT v. Acevedo, 78 DPR 540 (1955).

Beyond the clear provisions of the Law, casuistry has recognized other groups which must be excluded from the right to negotiate.

a) **Managerial Employees,** those whose interests are intimately linked to those of management or who formulate, determine and effect managerial policy. These employees lack any right to organize in labor unions or demand to negotiate an agreement. The United States Supreme Court has so ruled in NLRB v. Bell Aerospace, 416 US 267 (1974) and reiterated in Yeshiva University v. NLRB, 444 US 672 (1980). NLRB v. Textron Inc., 416 US 267, 85 LRRM 2945 (1975).

In Yeshiva, supra, the United States Supreme Court stated *[English text cited]*:

> "Managerial employees must excercise *[sic]* discretion with or even independently of established employer policy and must aligned *[sic]* with managment *[sic]*...normaly

> *[sic]* an employee may be excused as managerial only if he represents managment *[sic]* interest by taking or recommending discretionary actions that effectively control or implement employer policy...

Employees identified with management have been repeat-edly and consistently excluded from the suitable unit by the Puerto Rico Labor Relations Board because they are managerial employees. See, Autoridad de las Fuentes Fluviales D-465; Autoridad de Energía Eléctrica, PC-84, D-900.

In Compañía de Turismo de Puerto Rico, Dec. 814 (1980), the Board, consistent with the pronouncements of the United States Supreme Court and the National Board stated in such cases that the concept of "intimately linked to management" presupposes an "alignment of ideas, interests and attitudes" between the employee who formulates or

determines administrative and managerial policy and norms of the employer.

The National Labor Relations Board was the one that initially established this exception, see Palace Laundry Dry Cleaning Corp. 75 NLRB 320, 21 LRRM 1039 (1947). In fact, within this category of employees are included those whose work is to make purchases for the employer and who in relation to this work compromise the employer's credit. See, Kearney and Trecker Corp. 121 NLRB 817, 42 LRRM 1450 (1958); Mark Trucks Inc., 116 NLRB 1576, 39 LRRM 1048 (1956). Also excluded from the coverage of the law have been employees who in the eyes of the public are considered the president's "right-hand man". See, EDP Computer Systems, 284 NLRB 117, 128 LRRM 1056.

In the instant case, the Organizers - Regional Representatives - are not only lined up with the employer's policies, they are the ones who formulate the organization's policy.

b. **CONFIDENTIAL EMPLOYEE:** under the term "confi-dential" employee, the United States Supreme Court has excluded from the Federal Labor Relations Act employees who have a connection with labor matters - those who assist and act in a confidential capacity for persons who formulate, determine or enforce managerial policy in the field of labor relations and those who because of their work regularly have access to confidential information on anticipated changes resulting from collective negotiating. See NLRB v. Hendricks County, 454 US 170, 108 LRRM 3105 (1981).

The employee of trust is one who acts in a confidential capacity towards a person who formulates, determines and carries out the company's labor policy. What makes it confidential is the access to confidential information relating to labor-management affairs. See NLRB v. Hendricks, 454 US 170

(1981); Washington Electric Corp. v. NLRB, 398 F2d. 669 (1968); Bell Aerospace, supra.

This interpretation has been adapted also by the National Labor Relations Board. See B.F. Goodrich, 115 NLRB 722 (1956); I.T.T. Grinnell, 212 NLRB 105 (1974); and the Puerto Rico Labor Relations Board, see Autoridad de las Fuentes Fluviales, Dec. 465 (1968); Autoridad de Acueductos y Alcantarillados, Dec. 510 (1909) and Fondo del Seguro del Estado, Dec. 565 (1970); Compañía de Fomento de Turismo, Dec. 645 (1973) and Banco Gubernamental de Fomento, Dec. 594 (1972).

In the case at bar, the Organizers have direct access to information about negotiation of collective bargaining agreements, wage reviews, recruitment and dismissal of employees before said decisions are made known to others, since they participate on the Executive Committee.

Based on the foregoing, it is abundantly clear that the [Labor] Relations Board is barred from recognizing the Union.

2. **THE HONORABLE COURT OF APPEALS ERRED IN VALIDATING AN ORDER WHICH DENIES APPELLANT THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW BY REFUSING TO LET IT PRESENT EVIDENCE ON THE MANAGERIAL EMPLOYEES AND OR CONFIDENTIALITY OF THE UNION MEMBERS.**

The Court of Appeals has erroneously upheld an order which deeply injures the constitutional right which petitioner has to due process of law. In effect, the Labor Relations Board deprived the appearing party of the opportunity to be heard and to create a record with the testimonial and documentary evidence in its favor and thus place this Honorable Court in a position to review the Board's finding. As it is expressly shown at page eleven (11) of the Examining Official's Report, the Teachers Federation, on repeated

occasions during the hearing, prayed to be allowed to show evidence impugning the certification of the Suitable Unit and it was not permitted to do this.

The Teachers Federation was deprived of its day in court and was prevented from establishing that the certification of the Organizers in a labor union is erroneous and contrary to law. The Board, without having reviewed evidence, concludes that the Teachers Federation engaged in an unlawful labor practice in its refusal to bargain with said union. The Federation's position was to the effect that the Organizers were excluded from the Labor Relations Act. The Board refused to hear and rule on this matter. On what case file, testimony or documentary evidence does the Board rely in order to order the enforcement of its decision regarding the Organizers? How can this Honorable court pass judgment on the suitable unit?

Since the Board's decision is groundless, it cannot be enforced.

This Honorable Supreme Court has ruled that a Decision & Order of the Labor Relations Board should be set aside when said organism does not make a finding which it was duty-bound to do because this constituted the heart of the matter", Puerto Rico Telephone Co. v. Junta de Relaciones del Trabajo [Labor Relations Board], 92 DPR 257, at pages 273 and 274.

In the instant case, the essential controversy of whether or not the Organizers or Representatives, by reason of their functions, are employees or not, in order to belong to a labor union, has never been ruled upon on its merits.

When the Federation was ordered to recognize and bargain with the Union, with a prior hearing on the merits and basing itself on an invalid Stipulation, it was deprived of

its right to due process of law. The Board's decision is not based on the file, is arbitrary and capricious, a product of confusion or manifest error.

THE HONORABLE COURT OF APPEALS ERRED IN GIVING VALIDITY TO THE LOCAL AND FEDERAL LABOR RELATIONS ACT.

In the case at bar, the report and recommendations of the Examining Official, which are attached as Exhibit II, show that the Union conditioned its waiver of the right to negotiate an agreement in exchange for **recognition** by the Federation and certain conditions which were unspecified being met, likewise concludes that **"the parties** to this Stipulation did not act in good faith and that the complaint should therefore be dismissed."

According to the Puerto Rico Civil Code, a contract may be declared null when the cause or object is unlawful (31 LPRA 3516) or when there is "causa turpis" which does not

constitute an offense, (sec. 3517). If our initial premise is the legal interpretation of the aforesaid Examining Official, that "the right to bargain cannot be conditioned", we must conclude that the Stipulation is null because it runs counter to the Labor Relations Act, counter to Public Policy and counter to the Civil Code.

It is crystal clear in the Report of Facts that the Board committed gross error by lending **partial effectiveness to the Stipulation**, contrary to its own findings and to what is ordained by the Civil Code.

We respectfully hold that once both parties had breached the Stipulation, it should have been set aside and the original complaint reinstated. The Board's actions run counter to law, to the agreements between the parties and is *[sic]* contradictory.

There is no room in the field of law for contradictory behavior and it should be

prohibited. See International General Electric v. Concrete Builders, 104 D.P.R. 871 (1976).

The Board probably should not have given its approval to the Stipulation in the first place, but, once it was approved and the original complaint was abandoned, the proper thing was to set aside said stipulation and reinstate the original complaint, not a new complaint based on the Stipulation.

Since the Stipulation was null, it did not generate any rights or obligations. A null act does not produce **any** of the effects which were proposed. See Millán vs. Caribe Motors Co., 83 D.P.R. 494 (1961); De Jesús vs. Guerra, 105 D.P.R. 207 (1976). Therefore, the Board could not nor can it force compliance therewith, partial or full. The most it could do was return to the moment when the Stipulation was signed and continue the proceedings. It having been concluded that

both parties reached the Stipulation without good faith, it had to be enforced exactly as agreed to, or declared null in its entirety. Why enforce it only as against the Federation?

Inasmuch as the Board's decision was based on an invalid agreement, the same cannot be enforced, especially when the law is clear and precise as regards those who are or are not covered by its provisions. The parties **cannot** confer jurisdiction on the board through a private agreement. The authority of the board comes from the Legislature. The Labor Relations Board cannot certify a union of supervisors, nor can an employer commit an unlawful practice by refusing to bargain with said organization. This matter has not been ruled on in Puerto Rico, but it *has* been in the Federal jurisdiction. See: NLRB v. News Syndicate Co., 365 US 695 (1961); Sakrete of N. California v. NLRB, 332 F2d 902 (CA 9th Cir. 1964) Cert. den. 379 US 961 (1965);

Beasley v. Food Fair of N.C. Inc., 416 US 653 (1974) NLRB v. Committee of Intern[s] and Residents, 566 F2d 810 (CA 2nd Cir, 1977) Cert den. 435 US 904 (1978); Hi-Craft Clothing Co. v. NLRB, 660 F2d 910 (CA 3rd Cir 1981) and NLRB v. Yeshiva University, 444 US 672 (1980).

The Labor Relations Board has the obligation to honor the clear meaning of the law as it emerges from its language, purposes and history as well as the courts' interpretation. The Board is a creature of the legislature and can only act within the jurisdictional framework which was delegated to it. The Board cannot expand its own jurisdiction through an administrative decision or by stipulation of the parties.

What is more, this is a question of federal public policy, the field being occupied by the National Labor Relations Act. Section 2(3) of the Federal Act excludes any person "employed as a supervisor" from the

term "employee". For its part, Section 14(a) provides *[English text cited]*:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, **but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.** 29 USC 14.

The above quotation has been construed in the context that occupies us in this case by both the circuit courts [and] the Honorable United States Supreme Court, the prevailing doctrine being that the Board cannot oblige an employer to recognize and bargain with a union of supervisors or managerial staff.

The United States Supreme Court has repeatedly ruled that supervisory or managerial employees are excluded from the act

and that the Board therefore lacks jurisdiction over any controversy between these employees and their employer. The Federal Act occupies the field and any state law which provides otherwise has to yield before the Federal Act. In Beasley v. Food Fair, Inc., 416 [US] 653 (1974), 86 LRRM 2197, the Supreme Court ruled that an employer does **not** have to bargain with a union of supervisors **even though a state law grants them that right.** Hanna Mining v. District 2 MEBA, 382 US 181, 60 LRRM 2473 (1965) et seq.

Beasley, supra, involved a claim for damages by a group of supervisors dismissed from their jobs by reason of their union activities. The controversy was whether Section 14(a) of the Federal Act, supra, prohibited a claim for damages due to dismissal under state law. It is concluded that the local law ran counter to the intention of Congress. The Court stated:

"But the second clause is a broad command that no employer shall be compelled to treat supervisors as employees for the purpose of "any law either national or local relating to collective bargaining". Consistently with this broader command, and Hanna's further statement that "Congress" *[sic]* propelling intention... [was]... to relieve employers from any compulsion under the Act and under state law to countenance or bargain with any union of supervisory employees". (quotations omitted. 86 LRRM p. 2197) "To permit a state law to deprive an employer of his right to discharge his supervisor from membership in a union would completely frustrate the congressional determination to leave this weapon of self-help to the employer". There were differences in the specific provisions addressed to supervisory

employees, but no difference in objective. Employers were not to be obliged to recognize and bargain with unions including or composed of supervisors, because supervisors were management obliged to be loyal to their employer's interests, and their identity with the interests of rank and file employees might impair that loyalty and threaten realization of the basic ends of federal labor legislation. Thus the Hose *[sic]* Report stated: (quotations omitted, 86 LRRM 2197)

"Management like labor must have faithful agents... If we are to produce goods competitively, and in such large quantities that many can buy them at low cost, then, just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not

subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, and to settle their complaints and grievances, but to determine how much work employees should do, what pay they should receive for it, and to carry on the whole of labor relations". H.R. Rep. No. 245, 80th Cong., 1st Sess., 16 (1947). What no one, whether employer or employee, need have as his agent *[sic]* one who is obligated to those on the other side, or one whom, for any reason, he does not trust". (86 LRRM 2198)

The same theme-that unionizing supervisors threatened realization of the basic objectives of the Act to increase the output of goods in commerce by

promoting labor peace is repeated in the Senate Report.

This history compels the conclusion that Congress' dominant purpose in enacting §§2(3), 2(11), and 14(a) was to redress a perceived imbalance in labor-management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed interests. See genarally *[sic]* NLRB v. Bell Aerospace Co., 416 U.S. 267, 85 LRRM 2945 (1974). We conclude therefore that **the second clause of §14(a)** relieving the employer of obligations under "any law, either National or local, relating to collective-bargaining" **applies to any law that requires an employer "to accord to the front line of management the anomalous status of employees".** S. Rep. No. 105, supra, 5. Enforcement against respondent in this case of §§95-81 and

> 95-83 would plainly put pressure on respondent "to accord to the front line of management the anomalous status of employees", and would therefore flout the national policy against compulsion upon employers from either federal or state agencies to treat supervisors as employees. (Emphasis supplied).

More recently the United States Supreme Court in NLRB v. Yeshiva University, 444 US 672 (1980), 103 LRRM 2526 (1980) in considering a petition to certify a union of university professors, stated *[English text cited]*:

> But professionals, like other employees, may be exempted from coverage under the Act's exclusion for "supervisors" who use independent judgment in overseeing other employees in the interest of the employer, **or under the judicially implied exclusion for "managerial employees" who**

are involved in developing and enforcing employer policy. Both exemptions grow out of the same concern: That an employer is entitled to the undivided loyalty of its representatives. Beasley v. Food Fair of North Carolina, 416 U.S. 653, 661-662, 86 LRRM 2196 (1974); see NLRB v. Bell Aerospace Co., 416 US 267, 281-282, 85 LRRM 2945 (1974). Because the Court of Appeals found the faculty to be managerial employees, it did not decide the question of their supervisory status. In view of our agreement with that court's application of the managerial exclusion, we also need not resolve that issue of statutory interpretation. (103 LRRM 2530)

Managerial employees are defined as those who "'formulate and effectuate management policies by expressing and making operative the decisions of their

> employer'". NLRB v. Bell Aerospace Co., supra, 416 US, at 288 (quoting Palace Laundry Dry Cleaning, 75 NLRB 320, 323, n. 4, 21 LRRM 1039 (1947)). **The employees are "much higher in the managerial structure" than those explicitly mentioned by Congress, which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary".** Id., at 283. Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management. (103 LRRM 2531)

The Court concluded that the participation of the professors in decision making concerning rules, policies, strategies and costs turned them into managerial staff excluded from the protection of the act and that therefore **the**

National Board had no jurisdiction to certify the union or to oblige the employer to recognize and bargain therewith.

In 1981, interpreting the legislative history concerning the exclusion of supervisors from the Federal Act, the Third Circuit in refusing to enforce a Decision and Order of the National Board, stated *[English text cited]*:

> The Senate and the House reports made it very clear that "[s]upervisors are management people... They abandoned the 'collective security' of the rank and file voluntarily because they believed the opportunities thus opened to them to be more valuable to them than such 'security'" H.R. Rep. no. 245, 80th Cong., 1st Sess., 16-17 (1947). In disapproving the Board's interpretation, the House Report commented: "What the bill does is to say what the law always

has said until the Labor Board, in the exercise of what it modestly calls its 'expertness', changed the law: **That no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for any reason, he does not trust".** Id. at 17 (emphasis in original). In NLRB v. Bell Aerospace Co., the Court reviewed this legislative history and rejected the Board's ruling that the agency had jurisdiction because certain buyers were not managerial employees. The Board was instructed to apply a more limited definition in keeping with the intent of the Taft-Hartley amendment to exclude managerial personnel. 416 U.S. at 289. Thus, in delineating the category of persons excluded, the Court construed the Amendment liberally. Beasley v. Food Fair of North Carolina, Inc., 416 US 653,

> 661-62, 86 LRRM 2196 (1974), employed a similar philosophy. There the Court held that remedies granted by the state to supervisors for discharges because of union membership were preempted by the Taft-Hartley Act. (Emphasis supplied) When only the supervisor's interests are at stake, it is clear that the intent of the Taft-Hartley Amendments is **to deny jurisdiction to the Board.**

The Court refused to enforce the Board's Order because it felt that it overstepped its own jurisdiction.

Therefore, there should be no doubt that in the instant case the Labor Relations Board is prohibited from ordering the employer to negotiate a collective bargaining agreement for a group of supervisory or managerial employees. This is so even though the employer has voluntarily decided to recognize

the union. It is similar to the case of the municipalities and government agencies which recognize bona fide organizations for discussion and resolution of labor problems. At the time when it is decided not to recognize them further or not to bargain with them, said organizations cannot turn to the Board to assist them, since the law does not grant them that right.

PRAYER, inasmuch as the judgment of the Court of Appeals is contrary to the Puerto Rico Labor Relations Act, to Federal and Local Public Policy in the labor field, since the Puerto Rico Labor Relations Board acted without jurisdiction, we very respectfully pray that the judgment impugned herein be revoked.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 3rd day of June, 1993.

I CERTIFY, a true and correct copy of the instant appeal was sent to the Legal Division of the Puerto Rico Labor Relations Board to its addresses of record.

[Signature]

GODWIN ALDARONDO GIRALD

BAR ASSOCIATION NUMBER 7486

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- CERTIFIED -

o be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION _ EXHIBIT XVI

IN THE PUERTO RICO SUPREME COURT

PUERTO RICO TEACHERS FEDERATION	*	
Plaintiff & Petitioner	*	CIVIL NO. CE-93-192
VS.	*	IN RE: CERTIORARI
PUERTO RICO LABOR RELATIONS BOARD	*	*[There is a filing stamp which reads:] 1993 JUL 20 PM 2:12/[illegible]*
Defendant & Respondent	*	

* * * * * * * * * * * * * *

MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT:

Comes now petitioner Puerto Rico Teachers Federation, represented by the undersigned counsel and very respectfully STATES AND PRAYS:

1. On July 2, 1993, this Honorable Court entered a Ruling in which it denied the Writ of Certiorari submitted by the party appearing herein. A copy of the notice of said Ruling was filed in the case record on July 7, 1993.

2. Petitioner herein prays for reconsideration of the aforesaid Ruling because it is matter of public policy not only in the Commonwealth of Puerto Rico but also in the United States. The decision of the Labor Relations Board and the trial Court runs contrary to the Puerto Rico Labor Relations Act, the National Labor Relations Act, public policy and the labor field and violates due process of law guaranteed by the Constitution of Puerto Rico and the United States.

3. The Ruling impugned herein has the effect of forcing petitioner Puerto Rico Teachers Federation to bargain with a **"Union"**

composed of managerial and/or supervisory employees in violation of the Federal Labor Relations Act and the Puerto Rico Labor Relations Act. Article 2 of the Puerto Rico Labor Relations Act defines the term employer in the following manner:

> "The term **employer** shall include **executives**, supervisors and **any person who performs activities of an executive nature in the interest of an employer, directly or indirectly,** provided that it shall include, moreover, any individual, partnership or organization which intervenes in favor of the employing party in any labor dispute or collective bargaining". (29 L.P.R.A. Sec. 63 (2))

The Term employee is defined by the Puerto Rico Labor Relations Act in the following fashion:

> "The term "employer" shall include any employee and shall not be limited to the employees of one employer in particular... ... **The term shall not include executives or supervisors.** (29 L.P.R.A. Sec. 63 (3))

For its part, Article 4 of the aforesaid Act expressly establishes that:

> "The **employees** are entitled, among other things, to organize among them-selves; to constitute, affiliate with or assist labor organizations; to bargain collectively through representatives of their choosing; and to engage in concerted activities aimed at

> collective bargaining or some other purpose of mutual assistance or protection. (29 L.P.R.A. Sec. 65)

The **National Labor Relations Act** as amended, 29 USC sec. 152 defines said terms in a very similar manner.

The above articles show that executives and supervisors are expressly excluded from the right to organize into labor unions. They do not have such a right and the Labor Relations Board lacks the authority to recognize or certify a union of supervisors or executives.

Managerial employees and/or employees of trust have repeatedly and consistently been excluded from the suitable unit by the Puerto Rico Board of Labor Relations. In that regard see, **Autoridad de Fuentes Fluviales,** D-465; **Autoridad de Energía Eléctrica,** PC-84, D-900; **Compañia** *[sic]* **de Turismo de Puerto Rico,** Dec. 814 (1980).

In the case of **Compañía de Turismo,** supra, the Labor Relations Board, consistent with the pronouncements of the United States Supreme Court and the National Labor Relations Board, stated thqt the concept **"intimately linked with management" presupposes an alignment of ideas, interests and attitudes between the employee who creates or determines policy and the employer's administrative and managerial rules.** See also, **Yeshiva University v. NLRB,** 444 U.S. 672 (1980); **EDP Computer Séptims** 284 NLRB 117, 128 LRRM 1056; **NLRB v. Hendricks County** 454 U.S. 170 (1981), **NLRB v. Bell Aerospace,** 416 U.S. 267 (1974).

In the above-cited cases, the United States Supreme Court has ruled that this subject is a matter of federal public labor policy and that a state Board which certifies a union of supervisors or managerial employees violates national public policy and should be set aside. *[sic]*

The Union certified by the Board in this case is composed of ten organizers or regional representatives. The function of each organization or representative within his region is to (1) enforce the rules, strategies and policies of the Federation; (2) to plan, develop and recommend a work plan for its area; (3) to recruit, organize and affiliate teachers with the Teachers Federation; (4) to represent the Teachers Federation in its area, receiving and processing complaints and grievances; (5) to meet with teachers, school principals and superintendents for discussion and problem-solving; (6) to participate in meetings to set strategies and policies to be followed by the Teachers Federation island-wide; (7) to participate in the Federation's decision making and to elect the members of the Board of Directors; Delegate Assembly and Executive Committee.

These representatives have so much authority that of eleven members who comprise

the **Federation's Executive Committee, seven (7) belong to the Regional Representatives,** (the organizers). It is evident, then, that these employees are intimately linked to management [and] cannot, consequently, be entitled to organize and bargain collectively.

The judgments of the Superior Court and the Court of Appeals show that the reason for forcing the Teachers Federation to recognize and bargain collectively with the Puerto Rican Federation of Workers concerning the organizers is the stipulation which was signed by the parties on March 8, 1989. To that effect on page 4 of the Judgment entered by the Puerto Rico Superior Court, San Juan Part, the Court writes as follows:

> As an element of opposition, the Teachers Federation adduces additionally that it was deprived of presenting evidence before the Board concerning the exclusion of the "organizers" from the Labor Relations

Act and the unsuitableness of the unit. It holds, moreover, that this controversy, concerning whether the "organizers", by virtue of their functions, may or may not belong to the labor union, was not ruled upon by the Board.

In the latter subject, the Teachers Federation is correct. The controversy was not ruled upon by the Board. It was ruled upon by the parties themselves in the settlement stipulation which was transcribed above in its entirety, wherefor it was not necessary to present evidence.

The stipulation of this case constitutes a settlement which is, in turn, a contract by which the parties, supposing that the litigious issue is doubtful or because they entertain doubts about its their

> respective rights, by each one giving, promising or withholding something, avoid the provocation of a lawsuit or put an end (as they did before the [Labor] Relations Board) to the one they had started. As such, the settlement stipulation in this case recognizes rights and had the scope of adjudication of such rights, implying a formal abandonment of any contention contrary thereto. Once the settlement stipulation was approved, as, in effect, it was approved by the Board, it binds the parties and those whom they represent. In binding the parties, the settlement stipulation contract has the effect of res judicata".

Can a stipulation confer jurisdiction on the Puerto Rico Labor Relations Board concerning a matter over which the Board lacks authority?

Can the parties validly enter into an agreement that runs counter to the public policy of the Commonwealth and the United States?

The parties cannot confer jurisdiction on the Board through a private agreement. The Labor Relations Board cannot certify a union of supervisors, nor can an employer commit an unlawful practice by refusing to bargain with said organization. Said "unlawful practice" does not exist. See, among others, **N.L.R.B v. News Syndicate Co.** 365 U.S. 695 (1961); **Sakarete of N. California v. N.L.R.B.,** 332 F2d. 902 (1964); **Beasley v. Food Fair of N.C. Inc.,** 416 U.S. 653 (1974); **NLRB v. Geshiva** *[sic]* **University,** 444 U.S. 672 (1980).

The Labor Relations Board has the obligation to honor the clear meaning of the law, as is evident from its language, purposes and history as well as the interpretation of the courts. The Board is a creation of the legislature and may only act within the jurisdiction which was delegated to it. The

Board cannot expand its own jurisdiction through an administrative decision or by stipulation of the parties. Especially when it is a matter of federal public policy, in which the "National Labor Relations Act" occupies the field, and where any person employed as a supervisor is expressly excluded from the term "employer". To that effect, Section 14 (a) of the aforesaid Act (NLRA) expressly provides:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, **but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.** 29 USC 14.

The above quotation has been construed in the context before us, both by the Circuit Courts and the United States Supreme Court, for

the purpose that the Board may not force an employer to recognize and bargain with a union of Supervisors and managerial staff.

The United States Supreme Court has repeatedly ruled that supervisory or managerial employees **are excluded from the act and the Board therefore lacks jurisdiction over any controversy between these employees and their employer.** The Federal Act occupies the field and any state law which provides otherwise has to yield before the Federal Act. In **Beasley v. Food Fair, Inc.**, 416 U.S. 653 (1974), the Supreme Court ruled that **an employer does not have to bargain with a union of supervisors even though a state law grants them that right.**

Based on the above-cited Acts and case law, there should not remain the slightest doubt that in the instant case that the Puerto Rico [Labor] Relations Board lacks jurisdiction to impose on the employer the obligation to negotiate a Collective Bargaining Agreement for a group of supervisory or managerial employees. This is so

even though the employer has voluntarily decided to recognize the Union.

A failure to set aside the Ruling impugned herein would constitute a flagrant violation of due process of law to which petitioner herein is entitled. In effect it is necessary that the Puerto Rico Labor Relations Board rule on whether or not the members of the respondent Union are managerial employees; for this, the Board should receive testimonial and documentary evidence from the parties. In the instant case, **the Board has never ruled on its merits whether the Union members are managerial employees or not.** The Superior Court so ruled in the instant case. Page *[illegible]* of the Judgment.

This Honorable Court has the duty, one which cannot be delegated or postponed, to lend force to and impose the clear public policy in the labor field established by the Puerto Rican legislature, the United States Congress and the United States Supreme Court and to guarantee petitioner its right to due process of law.

PRAYER

Inasmuch as the Ruling impugned herein is contrary to the Puerto Rico Labor Relations Act, the Federal Labor Relations Act and due process of law, it is proper as an issue of law to set aside said Ruling and consequently issue the writ of certiorari prayed for, remanding the case to the Labor Relations Board to pass judgment on whether the organizers are "employees" for purposes of the law or are supervisors / managerial staff excluded from the protection of same.

I CERTIFY that I have sent a true and correct copy of this writ to Leticia Rodríguez García, Esq., Legal Division of the Puerto Rico Labor Relations Board, P. O. Box 14427, Barrio Obrero Station, Santurce P.R. 00916[.]

RESPECTFULLY SUBMITTED[.]

In San Juan, Puerto Rico, this 20th day of July, 1993.

[Signature]

GODWIN ALDARONDO GIRALD

BAR ASSOCIATION NUMBER 7486

LE MANS CONDOMINIUM, SUITE 803

602 LUIS MUÑOZ RIVERA AVENUE

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Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

EXHIBIT XVII

IN THE PUERTO RICO SUPREME COURT

PUERTO RICO TEACHERS FEDERATION	*
Plaintiff & Petitioner	*CIVIL NO. CE-93-192
VS.	*IN RE: CERTIORARI
PUERTO RICO LABOR RELATIONS BOARD	*[There is a filing stamp which reads:] FILED / CLERK'S OFFICE/ SUPREME
Defendant & Respondent	*COURT/'93 AUG 27 P 4:50

SECOND MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT:

Comes now petitioner Puerto Rico Teachers Federation, represented by the undersigned counsel and very respectfully STATES AND PRAYS:

1. On August 25, 1993, the party appearing herein was notified of the Ruling which this Honorable Court entered on August 20. A copy of the notice of said ruling was filed in the case record on August 24, 1993.

2. Through said ruling, the Motion for Reconsideration submitted by petitioner was denied.

3. Petitioner respectfully holds that said ruling is erroneous since it renders inalterable the decision of the Labor Relations Board and the Trial Court, which are contrary to the Puerto Rico Labor Relations Act, the National Labor Relations Act and public policy in the labor field, as it forces petitioner to recognize and bargain with a group of managerial

employees and/or employees who are intimately linked to management.

4. We reiterate that the judgments of the Superior Court and the Court of Appeals show that the reason for forcing the Teachers Federation to recognize and collectively bargain with the "Puerto Rican Federation of Workers", is the stipulation which was signed by the parties on March 8, 1989.

To that effect, page 4 of the Judgment entered by the Puerto Rico Superior Court, San Juan Part[,] the Court states the following:

> As an element of opposition, the Teachers Federation adduces additionally that it was deprived of presenting evidence before the Board concerning the exclusion of the "organizers" from the Labor Relations Act and the unsuitableness of the unit. It holds, moreover, that this

controversy, concerning whether the "organizers", by virtue of their functions, may or may not belong to the labor union, was not ruled upon by the Board.

In the latter subject, the Teachers Federation is correct. The controversy was not ruled upon by the Board. It was ruled upon by the parties themselves in the settlement stipulation which was transcribed above in its entirety, wherefor it was not necessary to present evidence.

The stipulation of this case constitutes a settlement which is, in turn, a contract by which the parties, supposing that the litigious issue is doubtful or because they entertain doubts about its their

respective rights, by each one giving, promising or withholding something, avoid the provocation of a lawsuit or put an end (as they did before the [Labor] Relations Board) to the one they had started. As such, the settlement stipulation in this case recognizes rights and had the scope of adjudication of such rights, implying a formal abandonment of any contention contrary thereto. Once the settlement stipulation was approved, as, in effect, it was approved by the Board, it binds the parties and those whom they represent. In binding the parties, the settlement stipulation contract has the effect of res judicata".

5. In the face of such a conclusion by the Honorable Trial Court we raised the following questions:

Can a stipulation confer jurisdiction on the Puerto Rico Labor Relations Board concerning a matter over which the Board lacks authority?

Can the parties validly enter into an agreement that runs counter to the public policy of the Commonwealth and the United States?

The parties cannot confer jurisdiction on the Board through a private agreement. The Labor Relations Board cannot certify a union of supervisors, nor can an employer commit an unlawful practice by refusing to bargain with said organization. Said "unlawful practice" does not exist. See, among others, **N.L.R.B v. News Syndicate Co.** 365 U.S. 695 (1961); **Sakarete of N. California v. N.L.R.B.,** 332 F2d. 902 (1964); **Beasley v. Food Fair of N.C. Inc.,** 416

U.S. 653 (1974); **NLRB v. Geshiva** *[sic]* **University,** 444 U.S. 672 (1980).

The Labor Relations Board has the obligation to honor the clear meaning of the law, as is evident from its language, purposes and history as well as the interpretation of the courts. The Board is a creation of the legislature and may only act within the jurisdiction which was delegated to it. The Board cannot expand its own jurisdiction through an administrative decision or by stipulation of the parties. Especially when it is a matter of federal public policy, in which the "National Labor Relations Act" occupies the field, and where any person employed as a supervisor is expressly excluded from the term "employer". To that effect, Section 14 (a) of the aforesaid Act (NLRA) expressly provides *[English text cited]*:

> Nothing Herein *[sic]* shall prohibit any individual employed as a

> supervisor from becoming or remaining a member of a labor organization, **but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargain-ing. 29 USC 14.**

The above quotation has been construed in the context before us, both by the Circuit Courts and the United States Supreme Court, for the purpose that the Board may not force an employer to recognize and bargain with a union of Supervisors and managerial staff.

The United States Supreme Court has repeatedly ruled that supervisory or managerial employees **are excluded from the act and the Board therefore lacks jurisdiction over any controversy between these employees and their employer.** The Federal Act occupies the field

and any state law which provides otherwise has to yield before the Federal Act. In **Beasley v. Food Fair, Inc.**, 416 U.S. 653 (1974), the Supreme Court ruled that **an employer does not have to bargain with a union of supervisors even though a state law grants them that right.**

This Honorable Court has the duty, one which cannot be delegated or postponed, to lend force to and impose the clear public policy in the labor field established by the Puerto Rican legislature, the United States Congress and the United States Supreme Court.

It cannot, we reiterate, force petitioner herein to recognize and collectively bargain with a union composed of managerial employees and/or employees intimately linked with management.

This Honorable Court as the highest judicial forum in the Commonwealth of Puerto

Rico must prevent a finding which runs counter to law, case law and public policy to prevail.

WHEREFORE, it is very respectfully prayed that the instant motion be granted.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 27th day of August, 1993.

I CERTIFY that I have sent a true and correct copy of this writ to Leticia Rodríguez García, Esq., Legal Division of the Puerto Rico Labor Relations Board, P. O. Box 14427, Barrio Obrero Station, Santurce P.R. 00916[illegible]

[Signature]

- CERTIFIED -
to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

GODWIN ALDARONDO GIRALD
BAR ASSOCIATION NUMBER 7486
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CERTIFIED TRANSLATION – EXHIBIT XVIII

[official seal] Commonwealth of Puerto Rico

EXHIBIT XII

PUERTO RICO LABOR RELATIONS BOARD

[address, etc.]

[illegible rubric]

MAR 30 1989

PRTF	IN THE CASE OF :	
VS	PUERTO RICO :	
	TEACHERS :	
PFW	FEDERATION :	
		:CASE NO. CA-89-57
	Defendant	:*[filing stamp reads:*
	- and -	:RECEIVED *[illegible]*
PUERTO RICAN FEDERATION		:JUN 19 1990*]*
OF WORKERS		:
	Complainant	:
		:

BEFORE: Agnes Maisonet de Marcano, Esq.

Administrative Judge

APPEARANCES:

Raúl Pérez Muñiz, Esq.

Raúl Santiago Meléndez, Esq.

For the Teachers Federation *[Filing stamp reads:*

Migdalia Adrover Rodríguez, Esq.

P. R. LABOR RELATIONS

For the Public Interest *[illegible]* / 90 JUN

Mr. Ramón Fuentes 14 PM 3:01*]*

For the Puerto Rican Federation

of Workers

REPORT OF THE EXAMINING OFFICIAL

The Puerto Rican Federation of Workers, hereinafter Complainant, filed a charge before the Puerto Rico Labor Relations Board, hereinafter the Board, on June 21, 1989. By virtue of said charge, the Board issued a complaint against the above-captioned employer, accusing it of violation of Article 8 (1)(d) of

the Puerto Rico Labor Relations Act, which from this point on we shall call the Act.[1]

The parties were duly noticed with copies of the Charge, Complaint and the respective Notice of Hearing. The undersigned was designated by the Chairman of the Board to act as the Examining Official.

The complaint, in essence, accuses Defendant of refusing to bargain with the complainant labor organization, from May 3, 1989 until the present, notwithstanding the fact that the latter is the exclusive representative of the employees who comprise the contracting unit of organizers of the Puerto Rico Teachers Federation.[2]

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[1] 29 LPRA 69 (1)(d)

[2] As shown by the Decision and Certification of Representative issued by the Board in Case No. P-88-10; D-89-1121.

Before continuing with our Report, we must explain succinctly, the factual and procedural background of the instant case.

I. **Factual and Procedural Background**

On July 1, 1988, the Puerto Rican Federation of Workers filed before this Organism a Petition to Investigate and Certify Representative in which it alleged that a controversy had arisen concerning the representation of the employees utilized by the Puerto Rico Teachers Federation, in a suitable unit for collective bargaining. Therefore, it prayed the Board, following investigation, to rule on said controversy.

The respondent unit includes: "all the representatives of organization and development utilized by the Puerto Rico Teachers Federation".

Following a preliminary investigation into the facts in controversy, as well as the

composition of the respondent unit, the Chairman of the Board ordered the holding of elections prior to the hearing, as part of said investigation.[3] The elections were held on October 13, 1988, under the direction and supervision of the Board's Chief Examiner, Atty. Olga Iris Cortés Coriano. As is shown on the Vote Checksheet, a copy of which will be supplied to the parties, the complainant labor organization obtained in its favor a majority of the valid votes issued by the employees of the Puerto Rico Teachers Federation entitled to participate in these elections.

Following the elections and the subsequent vote count, the Board's Investigative Division took steps for the employer to recognize the Puerto Rican Federation of Workers

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[3] As provided in Article III, Section 6, Clause (a) of Regulation No. 2 of the Board.

as the exclusive representative of the employees concerned, for purposes of collective bargaining, which the former refused to do on the grounds stated in its communication of August 22, 1988.[4]

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[4] Document entitled "Brief in Support of the Position of the Puerto Rico Teachers Federation", subscribed by Respondent's legal counsel, Atty. Raúl Pérez Muñiz. In essence, the document states that the Federation refuses to recognize the complainant labor organization as the exclusive representative of the organizers of the Puerto Rico Teachers Federation, because it considers that the latter are employees who are intimately linked to managerial interest, which places them outside the definition of "employee" contained in the Puerto Rico Labor Relations Act.

After analyzing the assertions put forward by the employer, in light of the entire case file (Case No. P-88-10), the Board ordered the holding of a Public Hearing, which took place on March 8, 1989 before the designated Examining Official, Atty. Antonio Rodas Viñas. Once the hearing was underway, the parties reported to the Examining Official that they had arrived at an agreement by virtue of which the Puerto Rico Teachers Federation recognized the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for purposes of collective bargaining.[5]

---

[5] As shown in the Official Transcript, on pages 1 and 2, Case No. P-88-10. The stipulation or agreement was expressed in documents signed by Messrs. Ramón Fuentes and Renán Soto Soto,

In view of the above and in accordance with Article 5, Clause 3 of the Act and based on the results of the elections held on October 13, 1988, the Board proceeded to certify the Puerto Rican Federation of Workers as the representative of the employees who comprised the aforesaid suitable unit, for purposes of collective bargaining with respect to wages, working hours and other conditions of employment.

Consonant with the foregoing, on March 28, 1989, the Board proceeded to close and file the case on representation.

On June 21, 1989, the Puerto Rican Federation of Workers requested the Board's intervention, in the face of the alleged refusal

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representatives of the petitioning labor organization and the Teachers Federation, respectively. (Exhibit 2 of Public Interest).

by Defendant to bargain. Following a preliminary investigation of the facts supporting the charge, conducted by the Board's Investigative Division, the appropriate complaint was issued against the Puerto Rico Teachers Federation.[6]

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[6] The complaint, issued on August 21, 1989, to which was

(continued...)

[6](...continued)
attached a copy of the Charge and the respective Notice of Hearing, was noticed to the Puerto Rico Teachers Federation by hand, through its legal counsel. The aforesaid documents were received by Iris F. Mojica, Secretary to Atty. Angel Raúl Pérez Muñiz, on August 25, 1989, as

II. **Preliminary Considerations**

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certified to in the "Receipt Payment Delivery of Documents" issued by the Secretary of the Board.

The complaint having thus been issued and duly noticed, respondent was granted a term of twenty (20) days, as of the date of notification, to file a written answer thereto. It was advised, additionally, that the duly granted term could be extended under extraordinary circumstances. On the other hand, it was likewise cautioned that failure to respond within the term granted would be construed to be a waiver of the right to a public hearing. Notwithstanding the above warnings, Respondent did not file its answer to the complaint in the time allowed.

The public hearing held in the instant case commenced on September 21, 1989, in the Hearing Room of the Board. The Public Interest was represented by Atty. Migdalia Adrover Rodríguez. Atty. Raúl Pérez Muñiz appeared in representation of respondent. Once the day's proceedings were underway, counsel for the Public Interest filed an Oral Motion to Hold in Contempt on the grounds that respondent failed to answer the complaint issued against it, in spite of the fact that it was duly notified. Defendant, on its part, requested to be granted a term of five (5) working days to show cause why it should not be held in contempt and to answer the complaint.

This Examining Official granted defendant's prayer regarding the Motion to Show Cause. The Motion for Entering of Default filed by the Public Interest remained in abeyance until such time as defendant would present its

Motion showing cause why default should not be entered. A recess was ordered until October 5, 1989.[7]

On September 28, 1989, defendant filed a document entitled "Motion Showing Cause", in which it explained that the President of the Puerto Rico Teachers Federation moved to the city of Washington (United States of America), on official business, after August 25, 1989, the date on which the Secretary of the Board served notice with a copy of the complaint. That once back in Puerto Rico, Mr. Renán Soto Soto became "involved in a controversy with the executive power of the Government of Puerto Rico", incidents which made it virtually impossible for

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[7] The recess was requested by Atty. Raúl Pérez Muñiz in view of the situation reigning in Puerto Rico as a consequence of the passing of Hurricane Hugo on September 18, 1989.

him to reasonably answer the complaint issued against the Puerto Rico Teachers Federation.

On the same date defendant filed in addition a document entitled "Answer to the Complaint".

On September 29, 1989, the Public Interest filed a "Motion in Opposition to Motion Showing Cause and Answer to the Complaint". The contents thereof reveal that the Public Interest basis its opposition on the fact that the reasons adduced by Defendant for failing to answer the complaint in the time allowed have absolutely nothing to do with the controversy raised by the case before us.

Having thoroughly studied the arguments contained in the three motions outlined above, we resolved to deny the Motion Showing Cause on the following grounds: The trip to Washington by the President of the Federation occurred after the notice of the complaint, wherefore the

impossibility of answering it within the term granted by the Board was a foreseeable fact. In the face of the expectation of being unable to answer in the time allowed, defendant could have taken responsible measures, such as requesting an extension to answer, which it would assuredly have been granted by the Chairman of this Organism. If following his return from Washington, Mr. Soto Soto faced new problems which prevented him from devoting time to answer the complaint, he could have let the Board know about these problems, which he did not do.

In synthesis, we respectfully feel that the reasons which prevented defendant from filing its answer to the complaint were foreseeable circumstances and faced with the impossibility of complying with the validly granted term, it should have petitioned the Chairman of the Board, through its legal counsel, to extend the term in which to answer,

an action we consider logical, correct, responsible and consonant with our order.

In that regard, our Highest Court has ruled that Board Regulations, Article II, Section 2, 29 R & R.P.R., Sec. 64-3,[8] was

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[8] Board Regulations, Art. II Sec. 2 authorizes the Board to deem admitted any undenied allegation in a complaint and the Board may subsequently make conclusions of fact and law based on such admission. Said provision in the pertinent part states that:

"Any allegation in the complaint... undenied by the answer shall be deemed admitted by defendant and the Board may subsequently make conclusions of fact and law based on such admission. At the request of the defendant the Chairman of the Board may extend the term in which to file the answer."

adopted for the purpose of promoting the diligent processing of complaints before the Board, for the sake of good administration of the adjudicative function and the diligent processing of cases. The same aim is pursued by Rule 45 of Civil Procedure, a statute which authorizes holding a party in contempt when it has failed to present allegations or defend itself. Our Highest Court goes on to say that, as a general rule, a good defense must incline the balance in favor of a hearing on the merits, unless the circumstances of the case are of such a nature as to reveal a defaulting or reckless intention on the part of the defendant.

It is fitting to point out that even though default was entered against defendant, its right to cross-examine the witnesses presented by the Public Interest was guaranteed.

The Examining Official, based on all the evidence contained in the entire case record

and observation of the witnesses, issues the following:

CONCLUSIONS OF FACT:

I. **The Defendant:**

The Puerto Rico Teachers Federation is an independent entity engaged in organizing teachers, by using employees for these tasks, thus constituting the employer in accordance with the meaning of said term in Article 2, Section 2 and 11 of the Act.

II. **The Complainant Labor Organization:**

The Puerto Rican Federation of Workers is a labor organization which exists for the purpose of obtaining better wages, working conditions and collectively bargaining with employers in the interest of those it represents; it is, therefore, a labor organization within the meaning of Article 2, Section 10 of the Act.

III. **The Facts:**

The Puerto Rican Federation of Workers is the exclusive representative of the organizers of the Puerto Rico Teachers Federation, in accordance with the Certification issued on March 20, 1989 by the Puerto Rico Labor Relations Board, Case No. P-88-10, D-89-1121.

As we indicated supra, said Certification is based on: (1) the results of the elections held on October 13, 1988 and (2) the Stipulation signed by the parties on March 8, 1989. By signing said Stipulation, Defendant pledged to recognize "the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 and according to the Board itself it established

it by ruling on September 16, 1988."[9] On the other hand, the Puerto Rican Federation of Workers pledged "not to exercise its right to bargain collectively, in representation of the organizers, as long as certain conditions obtain, which are going to be established by the parties on or before March 20, 1989, by making a maximum effort to achieve same."[10]

The parties involved in this controversy met on March 20, 1989 to discuss the conditions alluded to in the Stipulation of March 8, 1989.[11] That same day (March 20, 1989), Complainant handed Defendant a "Proposal" containing the conditions which that labor organization feels are the ones mentioned in

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[9] Stipulation of March 8, 1989, paragraph 1.

[10] Stipulation of March 8, 1989, paragraph 2.

[11] T. O. p. 13

paragraph number 2 of the agreement signed by the parties.[12]

The meeting of March 20 did not bear the desired fruits and the parties agreed to meet again. The second meeting took place on March 31, 1989. That same day, Complainant handed Defendant a letter addressed to Mr. Renán Soto Soto, in which it gives notice of its intention to initiate bargaining in the interest of the organizers.[13]

Complainant, anticipating the possibility of a refusal to bargain, prepared the letter of March 31 for the purpose of delivering it to the President of the Puerto Rico Teachers Federation, should the latter express his intention not to bargain, which in fact happened. In the course of the meeting,

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[12] T.O. p. 45, 62 and 63

[13] Letter of March 31, 1989 signed by Mr. Ramón L. Fuentes.

Mr. Soto informed the Union that in his capacity as President of the Puerto Rico Teachers Federation, he was not authorized to bargain collectively with respect to terms and conditions of employment of the organizers.[14]

On May 3, 1989, Complainant sent a second letter to Defendant accompanied by a "Proposal of Collective Bargaining Agreement" for the Organizers Unit of the Puerto Rico Teachers Federation.[15]

The third communication, giving Defendant notice of its intention to sit down to bargain and the date and time when it would be available, was sent by Complainant on May 23, 1989.[16]

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[14] T.O. pp. 56, 57 and 58.

[15] Exhibit 3 - Compendium of Documents - Public Interest.

[16] Letter of May 23, 1989, addressed to Mr. Renán Soto Soto and signed by Mr.

After turning to this Board for jurisdiction, Complainant wrote a fourth invitation to bargain, which was sent by certified mail return receipt requested and received by Defendant on September 25, 1989, as shown on the return receipt no. P/692-641-697.[17]

Analysis:

A charge of refusal to bargain will be successful if four indispensable elements are present: that a representative has been designated by a majority of the employees; that the unit is suitable; that a requirement to bargain collectively has been made by the representative and that the employer has refused

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Ramón L. Fuentes.

[17] Letter of September 14, 1989, addressed to Mr. Renán Soto Soto and signed by Mr. Ramón L. Fuentes.

to bargain.[18] In the instant case there is no controversy over the first two elements, the latter two remaining in dispute, even though Defendant has argued insistently that there is, indeed, a controversy as regards the first two elements. It seems to us that there can be no controversy with respect to the representative of the employees and the composition of the suitable unit, since it was the Puerto Rico Teachers Federation itself, represented by its President, Mr. Renán Soto Soto, who recognized Complainant, Puerto Rican Federation of Workers "as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation....." By recognizing Complainant as the exclusive representative of

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[18] Federico Barela, *[cited in English:]* The Puerto Rico Labor Relations Act: A State Policy and Its Application, page 315 (1962).

the employees concerned, Defendant in turn recognized the suitability of the aforesaid unit. It is a general maxim of Law that it is not lawful for anyone to go against their own acts (estoppel). Our Highest Forum has pondered on repeated occasions that contradictory behavior has no place in the field of Law and must be prohibited. Int. General Electric v. Concrete Builders, 104 DPR 871 (1976). This doctrine is based on good faith as the governing principle of juridical life. Diez Picazo defines good faith as "fidelity in behavior, upright and faithful conduct. It supposes the keeping of the fidelity of one's word and not betraying trust nor abusing it.["] Diez Picazo,*[sic]* La Doctrina de los Propios Actos, 1963 Ed., p. 157.

On the other hand, Defendant claimed on repeated occasions in the course of the public hearing, its right to collaterally attack the

Decision and Order of the Board in Case P-88-10; D-89-1121. This is erroneous inasmuch as in our ordinance a Decision and Order for Elections is susceptible to "collateral attack" only after a Decision and Order in a case of unlawful practice for refusal to bargain with the union which won the elections.[19] Once the Decision and Order for Elections is issued, the election process is carried out and the union which has prevailed is certified, if that is the case. It then falls to the employer to sit down to

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[19] Article 5 (3) and (4) of Act 130 of May 8, 1945, as amended, 29 LPRA 66 (3), (4). Junta de Retiro para Maestros, Case No. CA-89-41, D-89-1147.

(continued...)

[19](...continued)

bargain, at the request of the union. Should it refuse, the union may file a Charge of unlawful labor practice, as in this case. That is how the procedure provided in this Organism is initiated, that should the complaining party prevail, it would obtain a Decision and Order in its favor ordering the defendant to sit down to bargain. If the employer insists on not bargaining because it does not accept the Board's finding, it is then that this Organism has to turn to the Supreme Court to pray for enforcement of the decision, and it is at that point that the employer has the right to collaterally attack the Decision and Order in the case of representation.[20] Notwithstanding all the above, we reaffirm our position that Defendant could not be successful in its collateral attack of the Decision and Order

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[20] Junta de Retiro para Maestros, supra.

issued by the Board in the case of representation, because it is prohibited by its own acts. In the autonomous juridical construction which give form to the rule of not going against ones own acts, the effect is produced objectively, in which the genuine will of the author of the acts does not count for anything. The trust which these acts produce in the third parties is protected, because to turn against them would obviously constitute an attack against good faith. When a person is prohibited from going against his own acts, the entire doctrine of declaration of will is completely cast aside in order to directly impose a juridical effect.[21]

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[21] Diez-Picazo, La Doctrina de los Propios Actos, p. 151; Puig Brutau, Estudios de Derecho Comparado, p. 126 and ss.; Int. General Electric, supra.

Based on the aforesaid grounds we shall henceforth address our attention to the call to bargain made by the representative of the organizers and to the employer's alleged refusal to bargain. This means that we must pass judgment on whether the requirements for sitting down to bargain, raised by Complainant, do or do not fulfill the technical requirements[22] set forth in our Ordinance in order for the Employer to be accused of refusal to bargain. Nevertheless, we shall pause here to analyze

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[22] Specific notice of the place, date and time to meet and statements that the purpose of the meeting is to negotiate a collective bargaining agreement. It is recommendable that this notice be made by certified mail return receipt requested. Abelardo Ceide, d.b.a. Finca Victoria y Carrizales, 4 DJRT 591 (1962).

paragraph no. 2 of the Stipulation signed by the parties on March 8, 1989.

It is abundantly clear that the Union, by signing such a Stipulation, conditioned the right of the Puerto Rico Teachers Federation's Organizers to collective bargaining, a right consecrated by the Act in its Article 4. It is our opinion that the right of certain employees to collective bargaining cannot be conditioned by circumstances extrinsic to the bargaining; nor can it be conditioned at the whim and caprice of the representative of said employees. Therefore, even though the bargaining was subject to the existence of certain circumstances, we shall find that this circumstance is "not established". We then move on to analyze the four bargaining requirements which the Union made of Defendant.

The letter of March 31, 1989 does not fulfill the requirements of notice which we

mentioned supra. If indeed it is true that Complainant expresses to the Employer its intention to initiate the bargaining, it is no less certain that it does not indicate the specific place, date and time to meet. The letter of May 3, 1989, like the previous one, likewise fails to comply with the aforesaid requirements of notice. The letter of May 23, 1989 was not duly noticed to Defendant. Finally, the communication of September 14, 1989, even though it complies with notice parameters, fails to specify place, date and time of meeting, nor does it offer alternatives. Nevertheless, Defendant, upon receiving such notices, was aware of its legal obligation to sit down to bargain with the Union, had it so desired.

The law recognizes collective bargaining as the proper instrument to promote the Government of Puerto Rico's public policy as

regards relations between employer and employees and the negotiation of collective bargaining agreements. It has expressed on innumerable occasions that an employer does not have to go to the Union to require it to negotiate a collective bargaining agreement, nevertheless, if upon being required by the Union for those ends it refuses to do so, according to the Act, it would be committing an unlawful labor practice.

The cardinal concept in collective bargaining is that of bargaining in good faith. Isabel T. Vda. de Saurí, 2 DJRT 632. The Act only imposes the duty to bargain, in addition it requires that it be done in good faith. The good faith concept is an elusive term which only acquires content and meaningfulness from the particular facts of each case. All that is needed is an open mind in a sincere desire to arrive at an agreement.

We must then go back to the moment at which the parties in this controversy were negotiating an agreement of recognition. From the instant the Teachers Federation and the complainant labor Organization agreed to subscribe and sign said agreement, the bargaining began. Nevertheless, the facts speak eloquently: Defendant, to get out of the problem momentarily agreed to recognize the Union; Complainant, in order to achieve the employer's recognition, conditioned the organizers' right to bargain to certain future circumstances which would be established in a joint effort.

In the undersigned's very personal opinion, between the parties there was not "an open mind in a sincere desire to arrive at an agreement["]; put another way, there was no good faith either on the part of the union or of the employer. It is relevant to point out as well

that even in the meetings which were held on March 20 and 31, 1989, the element of good faith was not present, either. Let us see why. The Union alleges that on March 20th, it handed to Mr. Renán Soto a document which contained "the conditions so that the Puerto Rican Federation of Workers will not exercise its right to bargain collectively in representation of them." The aforesaid document enumerates four (4) conditions for Complainant to waive the organizers' right to bargain. Nevertheless, in number 5 "Other Matters", Complainant demands of the employer the discount of quotas in its favor, of the organizers' wages, full payment of the medical plan by the employer, better wages, bonuses, liquidation of the excess of 90 days of sick leave, etc. It seems to us that Complainant is contradicting itself. First it presented certain conditions, which if accepted by the Teachers Federation would have the effect

of not bargaining. One line later, in Clause No. 5, it makes innumerable demands on the employer, characteristic of collective bargaining.

As for the meeting held between the parties on March 31, 1989, it seems to us that what happened there demonstrates ever further the absence of good faith from both parties, a total absence of an open mind in a sincere desire to arrive at an agreement. Let us it examine it carefully: before March 31st, the Union acted ahead of time in drafting a letter in which it reports its intention to commence the bargaining. When the day arrives for the meeting (March 31st), it takes it, prepared just in case they are informed that the employer was not willing to bargain; they would then hand over the letter, as in point of fact happened.[23] For its part, the President of the Puerto Rico

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[23] T.O. p. 56

Teachers Federation informed the Union that the Board of the Puerto Rico Teachers Federation had disallowed it from carrying out the collective bargaining with respect to the Organizers.[24] In other words, the actions taken by both parties in the aforesaid meeting, clearly demonstrate their mutual intention to nullify the Agreement which they subscribed and signed on March 8, 1989 before this Organism.

The good faith requirement is satisfied when the employer listens to the Union's proposals, gives them careful attention, replies to its arguments, presents its position, explains the reasons which justify it, and shows a desire to compose the differences which arise. Federico Barela, supra, at p. 298. We conclude that the Puerto Rico Teachers Federation did not satisfy the good faith requirement, inasmuch as from the start of the meeting of March 31st, its

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[24] T.O. p[p]. 56, 59 and 60

intention was clear in the sense of nullifying the Stipulation of March 8, 1989. The Union had the same intention, which was clearly demonstrated with the testimony given in the Public Hearing by Mr. Ramón L. Fuentes.

The Labor Relations Act provides that it shall be an unlawful labor practice for an employer to refuse to bargain collectively with the representative of the majority of its employees in a suitable collective bargaining unit. There is no doubt whatever that the fundamental conditions demanded by the Act and case law for a refusal to bargain to occur have been fulfilled in this case.

As it is known, the Act does not require employer[s] in Puerto Rico to arrive at an agreement with their employees, based on the terms that the latter propose, but it is the duty [of] every employer to bargain in good faith over all t[he] legitimate proposals of the

union, in hopes [of] arriving at an agreement. Nevertheless, the facts explained lead [us] to conclude that both the employer and the uni[on] failed to fulfill their legal obligation to bargain in good faith. Collective bargaining refers to the processes o[f] interaction between an employer and the representative of its employees concerning wages and other conditions relating to employment.[25] In the case before us this interaction between the Teachers Federation and the complainant labor organization does not obtain; on the contrary, a marked antagonism arises with transparent clarity which has utterly prevented the flow of collective bargaining for the good of the workers concerned.

In view of the facts and the aforesaid principles, and the attitude assumed by both

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[25] See: Labor Law Course. Commerce Clearing House, Inc. (1965), p. 1674-1675.

Defendant and Complainant, and absent clear and previously established rules to guide the conduct of the parties at this time, it is reasonable to conclude that both the Teachers Federation and the Federation of Workers are liable in solidum for the unlawful practice imputed herein. Consequently it is recommended to the Honorable Board to deny the complaint filed in the above-captioned case. This, clearly, does not mean that Defendant should be exonerated from its duty to bargain with the Complainant union, in the interests of the Organizers, for which reason we also recommend this Illustrious Body to give the parties guidance about the desirability of carrying out the collective bargaining free of quarrels and antagonism, in which there predominates a climate of peace, solidarity and a sincere desire to arrive at satisfactory agreements. We cannot lose sight of the fact that favoring

collective bargaining and its mechanisms for resolving internally the problems between employees and employer is the public policy in both the United States and in Puerto Rico and other countries. Nazario vs. Tribunal Superior, 98 DPR 846 (1970).

Just as it is provided in Article II, Section 10 of Regulation No. 2 of the Puerto Rico Labor Relations Board, within five (5) days from the date of the transferral of the case to the Board, in accordance with Section 9 of the aforesaid Article, either party in the case or Counsel for the Board may file a written explanation in quintuplicate, presenting exceptions to this Report or to any part of the proceeding including decisions on all the motions or objections before the Board, together with the original and four copies of a brief supporting same. Immediately after filing the Explanation of Exceptions and the brief, the

party or Counsel for the Board who filed it, shall give notice with copies to each of the other parties in the proceedings, which shall be entitled to answer them, within ten (10) days after the date of the notice. Just as provided further on in the cited Article II, Section 10, if any party in the proceeding wishes to obtain permission to present oral argument on its exceptions and objections before the Board, it must request it from same in writing within five (5) days from the date on which it receives a copy of this Report.

Respectfully submitted.

In San Juan, Puerto Rico, this 13th day of June, 1990.

[Signature]

Agnes Maisonet de Marcano

Administrative Judge

[A circular ink stamp reads: PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL*]*

NOTICE

WE CERTIFY: That we have sent a copy of the instant Report of the Examining Official, by certified mail to:

1.- Angel Raúl Pérez-Muñiz, Esq.
Pérez Muñiz & Santiago Meléndez Law Offices 204 Domenech Ave.
Hato Rey, Puerto Rico 00918

2.- P.R. Teachers Federation
1572 Ponce de León
Caribe Housing Development
Río Piedras, Puerto Rico 00927

3.- Puerto Rican Federation of Workers
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

4.- Leticia Rodríguez García
Attorney-Legal Division
Board (hand-delivered)

In San Juan, Puerto Rico, this 15th day of June, 1990.

[Signature]

Ada Rosario Rivera

Secretary of the Board

[A circular ink stamp reads: PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL*]*

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o be a correct translation prepared by

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EXHIBIT XIX

EXHIBIT XI MINUTES

NO. 049

MINUTES OF THE

Ordinary Meeting of the Executive Committee of the Puerto Rico Teachers Federation held on January 29, 1989 in the organization's meeting hall in Río Piedras at 1:30 p.m.

Members present:

Renán Soto Soto - President	Haydeé Reyes
Irma Rodríguez Morales	Anselmo Román
Luz E. Sánchez - Secretary	Víctor Santo
Domi[?]	
Leopoldo Hernández	William Ortiz

Members Absent:

Sonia Cortés

Rafael Meléndez - excused

María Torres - excused

Agenda:

1. Labor Report made by the Board of Directors

2. Budget

3. Bargaining F.M.P.R. employees

4. Report Health Plan

5. Letter Antonio Arriaga

6. Softball Tournament

Renán Soto chairs the meeting and suggests that the order of point be altered to discuss the Board's report, budget and the softball tournament. The suggestion is adopted by the chair.

Fellow member Haydeé [asks] to be excused at 3:00 p.m. It is acce[pted].

Lucy states that co-members Rafael Meléndez and María Torres excused themselves from this meeting. In addition she is grateful for the calls and flowers which she was sent when she was sick.

Work schedule:

William suggests that we work until 4:00 p.m.

Leopoldo suggests until 6:00p.,.

Victor proposes it be until 5:00 p.m.

The vote is taken in series. The results were:

4:00 p. m. - 2 votes

5:00 p.m. - 2 votes

6:00 p.m. - 0 votes

There being a tie there is a re-vote.

4:00 p. m. - 2 votes

5:00 p.m. - 3 votes

We shall work until 5:00 p.m.

The chairman grants 10 min. for the report to be read.

Fellow member Irma states that the practice of handing in the reports on the same day as the discussion makes an analysis thereof difficult. She asks if from now on they can be handed in more days in advance.

Renán answers that the budget had already circulated. In addition he points out that what the report contains is gathered from what was already set forth in the evaluation reports

which were already discussed.

LABOR REPORT MADE

Víctor states that in the report some lines be include concerning the secretariat of education and curriculum to indicate:

1. there were personal problems which prevented a more effective job in that area.
2. no evaluative report was given
3. there were certain activities which were conducted by other persons. This was accepted by the consensus of all.

Haydeé states that on p. 10 of the propaganda report it be included that she served as a moderator in the Forum of gubernatorial candidates which took place at the Delegate Assembly.

Lucy states that on p. 8 Regional Representatives section it should say that she directed in stead of collaborated on the Hostos Commission.

Irma states that the actions taken in relation to the P.R.T.F. car and the employees' health

plan should be included.

Motion by Víctor to approve the report with the changes made. Motion passes unanimously.

BUDGET

Leopoldo reports the changes the budget has undergone. These were

elimination of the economic activity

accounts payable were itemized in different entries

Motion by Manuel to approve the budget. Motion passes with Irma abstaining.

BARGAINING WITH THE EMPLOYEES

Renán reports that the agreement with the employees is bargained every two years and that the economic part is made every year.

In August bargaining was initiated. Leopoldo Hernández and Nereida Martes were designated for this bargaining.

At this time there are differences on the economic aspect. We asked the fellow members to have a document discussed which contemplates the restructuring and duties of the position thus enabling the designation of a wage scale.

Renán Also *[sic]* tells us that the union requested a $100 raise. We propose in turn instead of the raise to give a $300 bonus to give us time to prepare the aforesaid document. He feels the union is willing to accept that proposal.

After certain questions were cleared up Victor presents motion to ratify Committee bargainer named by the president. Motion passes unopposed.

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Motion by Víctor to give approval in principle to the general alignments for the bargaining of the economic aspect with the employees presented by Renán. Motion passes unopposed.

HEALTH PLAN REPORT

Renán reads his report where among other things he indicates that no reduction is foreseen. The problem now is with the delayed payments to providers. To questions by Víctor he says that this year the goal of 10,000 members was reached.

In addition to this report the attachment about

MAPLASA is discussed. Víctor moves to approve the report. Motion passes with Irma abstaining.

SOFTBALL TOURNAMENT

Leopoldo brings the following recommendations from the Sports commission.

1. that the tournament be divided into two sections and a semi-final series be established

2. the national center shall be in San Sebastian

3. on March 4 the regional tournaments will kick off

4. March 18 would be the semi-final

5. April 1 would be the National Tournament

6. possible centers for the regionals:

   a. Las Piedras - Humacao region

   b. Hatillo - Arecibo region

The recommendations are adopted unopposed

William moves to adjourn at 5:50 p.m.

/s/*Luz E. Sánchez González*

Renán Soto Soto, President

Luz E. Sánchez González, Secretary

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EXHIBIT XX

[*logo: PRTF*] **Puerto Rico Teachers Federation**

[address, etc.]

AGREEMENTS ASSEMBLY April 17, 1989

1. Motion by Leopoldo Hernández: for this great Assembly to adopt the organizational policy of the elected organizer.

Votes:

blank	2
invalid	1
opposed	129
in favor	162

2. Motion by Miguel Báez: to approve the first 5 points of the document of agreements subscribed by Miguel, Antonio, Víctor, Renán and Juan. Point #6 be discussed at a second session of the Assembly.

Vote: unanimous

AGREEMENTS OF THE ASSEMBLY March 4, 1990

1. Motion by Miguel Báez: that a commission be named to study the present situation of the organizers and to make a report to this assembly. Motion passes.

2. Motion by Irma Rodríguez: to name the commission. Motion adopted.

3. The commission is comprised of the following co-workers:

Luis R. Santos	Saturnino Rivera
Pedro O. Cruz	Vilma Rios
Otilio Rosado	Miguel Báez
Juan Camacho	Liana Irizarry

I certify this to be correct in accordance with the minutes:

/s/ *Lucy Sánchez González*

Secretary, Executive Committee

[*along bottom of page:*] **Together We Struggle!**

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169 — EXHIBIT XXI

MINUTES NO. 044

Extraordinary Meeting of the Executive Committee of the Puerto Rico Teachers Federation. Nov. 23, 1989

Time : 6:30 p.m.

Place : Office of the President, Río Piedras

Members Present:

1. Renán Soto
2. Leopoldo Hernández
3. Manuel Boígues
4. Sonia Cortés
5. Víctor Santo Domingo
6. Rafael Meléndez
7. María Torres
8. William Ortiz
9. Lucy Sánchez

Members Absent:

1. Haydeé Reyes - excused
2. Anselmo Román

Agenda :

1. 1988 -89 Budget

Fellow member Renán Soto chairs this meeting where fellow worker Haydeé excused herself in

writing

Renán explains in relation to the process of discussion of the organizational policy as approved by the delegate assembly. He tells us that he feels we should extend until January 9, 1989 in order for proposals to be submitted. In addition he indicates that the organization will be in charge of reproducing and sending same to the delegates. There was a consensus that this should be so.

1988-89 Budget

Leopoldo reads the budget submitted to the Executive Committee. After he answers the Committee members questions the following is approved:

1. elimination of the economic activity on motion by Víctor Santo Domingo to which there was no objection.
2. to make a document explaining the budget by motion of Víctor Santo Domingo

The following suggestions are made:

1. Víctor suggests that it be typed.

2. Manuel tells us that what is going to be used to amortize the debt of the locals be put in a savings account in the cooperative and on June 30 be divided among the locals.

3. Renán and Leopoldo will meet to make the necessary changes and then bring the final budget to this body with its explanatory document.

Motion by Víctor to approve the budget with the modifications made. Motion unopposed.

The meeting is adjourned at 9:10 p.m.

Renán Soto Soto
President

Luz E. Sánchez
Assistant Secretary

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MINUTES NUMBER: _____

PUERTO RICO TEACHERS FEDERATION

MINUTES

December 19, 1989

ORDINARY MEETING OF EXECUTIVE COMMITTEE - 2ND SESSION

Time: 10:30 A.M.

Place: Meeting Hall PRTF

PRESENT:	ABSENT:
Renán Soto - President	Manuel Boígues - excused
Irma Rodríguez	Haydeé Reyes - excused
Lucy Sánchez	Anselmo Román - excused
Jesús Delgado	Rafael Meléndez - excused
Víctor Santo Domingo	María Torres
William Ortiz	
Juan Camacho	
Rubén Sanabria - late (excused)	

Leopoldo Hernández - late (excused)

AGENDA:

1. Reading of prior minutes
2. Correspondence
3. Follow up agreements:
    a. Report Margarita Berríos
4. Old business:
    a. Report amendments DIP Regulations
    b. Anselmo and María case
    c. Report Administrative Contractual Letter
    d. Bulletin Haydeé Reyes
5. New business:
    a. Mario Pérez case - Río Piedras I
    b. Wage review Nereida Martes
    c. Gloria Torres case
    d. PFW collective bargaining
    e. Proposed activity Secretary Education & Curriculum
    f. Informative point Advisory Committee Evaluation
    g. Informative point Hostos Commission

The work begins at 10:45 with new fellow

members present.

Lucy Sánchez makes motion to work until 4:00 P.M.

Motion unopposed.

I. Reading of prior minutes:

Motion by Víctor Santo Domingo to approve minutes of July 28, 1988. Motion unopposed.

Motion by Jesús Delgado to approve the minutes of July 29, 1988. Motion unopposed.

Motion by Leopoldo Hernández to approve the minutes of July 30, 1988. Motion unopposed.

Motion by Jesús Delgado to approve the minutes of August 20, 1988. Motion unopposed.

Motion by Irma Rodríguez to postpone the reading of the rest of the minutes for the next ordinary meeting. Motion passes.

II. Correspondence:

1. Letter of November 5, 1989 from Rafael Meléndez, where he tenders his resignation to the Executive Committee and to the Health Plan Board.

Motion by Víctor to postpone acceptance of Rafael's resignation until they have more

information on the situation.

There is an objection by Juan Camacho. The vote is taken: 4 in favor, 3 against. Motion passes.

2. Letter from Víctor Santo Domingo of November 27, 1989 wherein he asks the President for an investigation of possible attempt to defraud the Health Plan by Iván Ramos Acosta, union organizer.

Renán proceeds to explain that Iván wanted to include Margarita Hernández Mergal as his wife on his health plan when she is actually his wife's daughter. In other words he wanted to include his stepdaughter as his wife.

The health plan is not in order with the request because it does not agree with the information of the prior year.

Following the discussion the following consensus is reached:

1. To summon Iván Ramos for a January 4, 1989 meeting with the Executive Committee to explain his version.

2. Said communication must be certified.

3. In addition, he shall be told why he is being summoned.

Juan Camacho asks his opposition to the procedure which will be used to go on record.

Irma suggests we discuss Margarita Berríos' report and thinks that in order for us to have broader criteria when the report is discussed for evaluation *[sic]*. It is accepted.

Three-minute recess to read said report.

III. Report on Margarita Berríos submitted by Irma Rodríguez (see file)

The report states that fellow-member Margarita Berríos unionized employee of the Teachers Federation has been careless in her duties since she apparently has emotional problems.

Irma Rodríguez says that fellow-member Berríos did not attend the medical appointment that was made for her. She feels she still needs help because she is not perform work of

excellence.

Víctor Santo Domingo suggests that the union be confronted through Ramón Fuentes concerning Margarita's situation. In addition, he states that the employee should be required to explain the reason why she failed to go to the medical appointment.

Irma acknowledges her laxity because she did not take that step with the employee.

It is decided to wait to have the report from Mildred Santiago from the Services Division to make a finding.

IV. Old business is postponed.

V. New business:

1. Mario Pérez case:

Lucy Sánchez states that the Board of Directors from Río Piedras I requests that the process of sanctions be begun against Mr. Mario Pérez, a teacher at the Gabriela Mistral School, who has shown a lack of respect toward the Board of Directors and to Vice-President Irma Rodríguez. Moreover, that he has legal cases against

fellow workers, Federation members, from his school. Apart from this he refuses to pay his full dues. He is presently withholding $2.00 from his payment of dues because he does not wish to cooperate with the Board of Directors.

Renán states that the Board of Directors must submit this petition in writing in or to be able to initiate the process of bringing charges. This will be heard at the meeting of January 13, 1990.

2. Nereida Martes wage review:

It is propounded that Nereida Martes is being paid her wages incorrectly. Lucy Sánchez makes a motion in the sense that since there are already debts with respect to 1983, the treasurer review that year and submit a report to the party on January 13, 1990. Motion passes unopposed.

Renán Soto states that Iván Ramos is outside and is asking for an audience now since he will be out of the country on the

date for which it was agreed to summon him.

Motion by Lucy Sánchez to alter the order of the agenda in order to hear Iván and then go back to the order. Victor Santo Domingo is opposed to this. The vote is taken: 5 in favor, 1 against. Motion passes.

Iván Ramos comes before the meeting by his own request so that he can be heard. He proceeds to examine the documents which we hold on the case.

Iván Ramos states that he removed Margarita Mergal to save the plan money. He indicates that he consulted with Janice del Valle, Health Plan employer, and she told him it couldn't be done, but that it didn't matter if he had written it because in the Plan they would make the necessary arrangements. Irma Rodríguez asks him[:] Who filled out the application where it indicates that Margarita Hernández Mergal is his wife? Ivan Ramos answered: "I

myself".

William Ortiz makes a motion to leave the finding on the Iván Ramos case for Thursday. Rubén Sanabria is opposed. The vote is taken, 4 in favor, 4 against. The president votes in favor. Motion passes.

Motion by Rubén Sanabria to adjourn (5:30 P.M.). Motion adopted.

/s/ Renán [illegible] */s/ Luz E. Sánchez*

RENAN SOTO — PRESIDENT

LUZ E. SANCHEZ — SECRETARY

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CERTIFIED TRANSLATION

MINUTES NO. ____

PUERTO RICO TEACHERS FEDERATION

MINUTES

January 13, 1990

ORDINARY MEETING EXECUTIVE MEETING

Time: 10:40 A.M.

Place: Meeting hall

PRESENT:	ABSENT:
Renán Soto - President	Anselmo Román
Irma Rodríguez	R a f a e l
Meléndez - excused	
Lucy Sánchez - late	María Torres
Leopoldo Hernández	
Manuel Boígues	
Haydeé Reyes	
Jesús Delgado	
Víctor Santo Domingo	

Rubén Sanabria - late (excused)

William Ortiz

Juan Camacho - late

At 10:40 A.M. the required quorum is not reached, wherefore Manuel Boígues makes a motion to wait until 11:30 A.M. William Ortiz is opposed. The vote is taken, 4 in favor, 1 against. Motion adopted.

AGENDA:

1. Reading of prior minutes.
2. Correspondence
3. Follow-up agreements:
    a) Rafael Meléndez resignation
4. Old business:
    a) Report Amendments D.Ed. Regulations
    b) Anselmo & María case
    c) Report Contractual Letter Administration
    d) Bulletin Haydeé Reyes
    e) Mario Pérez case
    f) Wage review Nereida Martes
    g) Gloria Torres case
    h) Collective Bargaining F.P.T.

i) Proposed activity Education & Curriculum Secretariat

j) Informative point Advisory Committee Evaluation

2

5. New Business:

a) Report Evaluation & Work performed

b) Application to Health Plan

Renán opens meeting by apologizing for being late since he had family problems. Suggests that the following subjects be discussed today:

a) Correspondence

b) Follow-up agreements:

1. Rafael Meléndez case

c) Old business:

1. Anselmo & María situation

2. Mario Pérez case

3. Nereida & Gloria case

4. Collective bargaining PFW

5. Reports evaluation

Jesús asks to be excused at 12:30 P.M. Motion unopposed.

I. Correspondence:

1. Letter Association Dominican Professors

2. Letter Anselmo Román:

Haydeé suggests we discuss the regional report in order to know what the letter is referring to

Motion by Haydeé to amende the agenda to take the report of the Arecibo region with the letter. Motion unopposed.

Lucy reads Anselmo's report

Motion by Juan Camacho that Anselmo's report be rejected by the Executive Committee. Manual Boíguez is opposed. Discussed and vote taken. 4 in favor, 5 against. Motion defeated. Irma Rodriguez abstains.

Motion by Manuel Boíguez to receive the report. Motion unopposed. Renán suggests an audit be made of the Camuy local and the

official steps be taken with the creditors for a full hearing on the case. It is not done in order to accuse anyone but rather to clarify the matter because of the allegations made by Anselmo in his letter. Motion adopted.

Lucy Sánchez makes motion to approve Anselmo Román's resignation as Arecibo regional representative. Motion unopposed.

Lucy Sánchez makes motion not to approve Anselmo Román's report. Motion unopposed.

Motion by Juan Camacho to notify the locals

of the region about the resignation as soon as possible. Motion passes.

3. Letter from Elena Cruz Aponte dated January 13, 1990 where she discusses the board of directors' decision to sever the teacher Mario Pérez from the organization of Río Piedras

Local I.

Irma Rodríguez details the case where on several occasions the teacher has been disrespectful to her as a director and the measures taken in the cases which he has submitted.

Motion [by] William Ortiz to initiate the process of severance of professor Mario Pérez from the organization. Motion unopposed.

The board of directors will be notified of the decision. In addition, the teacher shall be notified that he has 30 days to appeal [the] decision.

4. Letter from Haydeé Reyes of February 13, 1989, where she discusses a situation that has occurred between herself and the organizer, Silvia Rodríguez.

Juan Camacho recommends that the president meet with the persons mentioned in the letter and bring a report with recommendations.

Lucy Sánchez makes a motion to invite the persons who are mentioned in the letter to a meeting of the body to be able to listen to

their versions of the incident. There is opposition. The vote is taken: 5 in favor, 2 against. Motion passes.

Motion by Manuel Boígues to include this point as number one at the next meeting of the Executive Committee. Motion adopted.

II. Follow-up agreements:

Rafael Meléndez situation:

Manuel Boígues reports that the fellow member has intentions of remaining in the United States and asks that his resignation be accepted.

Motion by Lucy Sánchez to accept the resignation of fellow member Rafael Meléndez as Humacao regional representative. Motion unopposed.

III. Old business:

1. Anselmo & María case:

That of Anselmo Román has already been resolved by accepting his resignation.

Motion by Manuel Boígues to the effect that the president write to María Torres expressing to her the concern of the Executive Committee

over her excessive absences and that at the next meeting if she does not answer the regulatory measures shall be applied to her. Juan Camacho amends [the motion] to the effect that in the letter she be asked to report on the work accomplished. Motion adopted. There is an objection to the motion as duly amended. The vote is taken: 8 in favor and 1 against. Motion adopted.

4

2. Wage review of Nereida Martes:

Leopoldo Hernández submits report on the wage history of fellow member Nereida Martes (see file).

Manuel boígues makes motion to approve the report with the treasurer's recommendations. Motion unopposed.

3. Act 89 case of Gloria Torres:

The situation presented by the fellow-member in a letter is analyzed and it is felt that she is entitled to four years. The total amount would be $1,200.00.

Manuel Boígues makes a motion to proceed with payment of the money owed to the fellow-member. Motion passes.

4. Collective Bargaining FTP:

Leopoldo states that he is bargaining with the union which represents the organization's clerical employees. He asks to be told the minimum and maximum he can offer in wages. He tells us that the PFW is requesting a raise of $100 per month.

Motion by Manuel Boígues for the treasurer to bring a breakdown of the wages of unionized employees and a breakdown of the budget of contingency expenses. Motion adopted.

5. Advisory Committee Evaluation:

Víctor Santo Domingo reports on this point.

One teacher per region was now chosen for meetings with the firm that will make the evaluation document. He gives us a summary of what has been done so far.

Irma Rodríguez congratulates the Hostos Commission on the act which was held

yesterday, January 13, 1990.

Meeting adjourns at 4:30 P.M.

[Signature] */s/ Luz E. Sánchez*

RENAN SOTO LUZ E. SANCHEZ

PRESIDENT SECRETARY

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CERTIFIED TRANSLATION EXHIBIT XXII

[logo] **Puerto Rico Teachers Federation**

Together We Struggle!

[address, etc.]

MINUTES NO: _____

PUERTO RICO TEACHERS FEDERATION

MINUTES

February 3 1990

EXTRAORDINARY MEETING EXECUTIVE COMMITTEE

Time: 10:45 A.M.

Place: PRTF Meeting Hall

PRESENT:	ABSENT:
Renán Soto - President	Haydeé Reyes
Lucy Sánchez	María Torres
Leopoldo Hernández	William Ortiz
Manuel Boígues	
Jesús Delgado	

Víctor Santo Domingo

Rubén Sanabria

Irma Rodríguez - late

AGENDA:

1. Collective Bargaining with the employees.
2. Continuation Organization Report
3. Discussion of Reports and Evaluations

The meeting commences at 10:15 A.M..

No one is excused.

Renán suggests that we work until 4:00 P.M. with a one-hour recess for lunch.

It is suggested, in addition, that people's reports be discussed.

Manuel Boígues makes motion to the effect that the agenda be approved. Motion adopted.

I. Collective Bargaining with the employees:

Renán tells us that a clear directive should be established concerning this matter.

Leopoldo gives report on the situation:

1. Two meetings have been held with the union to receive proposal and discuss same.

Leopoldo delivers a report on

employee wages.

Manuel Boígues asks: If Renán's Secretary is going to be taken into consideration.

Leopoldo indicates that the raise is automatically passed on to her.

Lucy Sánchez requests three-minute recess to read the document.

The recess is decreed.

Manuel Boígues asks if the employees have been offered some offering by Leopoldo.

Leopoldo answers: "No". Their proposal is for $100.

Manuel says that they have put out the word that they are going to be offered $50. Where do they get that from?

Leopoldo presents the recommendation that they be given the barometer of bargaining up to $50.

Manuel asks where the money is going to come from according to the budget.

Leopoldo indicates from the contingency expenses.

Manuel comments that: "seeing the report

on wages you can realize what a miserable wage they were receiving."

Jesús Delgado asks if it has been considered that the agreement not be annual and to define wage scales by category.

Renán clarifies that the agreement is bargained every two years and for the employees it is a triumph to bargain for the wage annually.

Juan Camacho says that the alternatives are one thing and the reality is another. His alternative is to discuss a raise now and to discuss with the union a package that would temper the rights acquired by the employees which is what has been propounded here.

Renán suggests that a minimum wage of $700 be established plus a $75 raise.

Irma Rodríguez supports Renán's proposal.

Víctor Santo Domingo says that it had been said before that the treasurer proposed $50 and nothing else. He feels that that amount is workable in the budget. He doesn't see the justification of the president's number.

He would like for it to clarified why the contradiction between the treasurer and the president. He shares that the $600 wages are very low.

Renán says when I make the proposal it's as I said previously it's sitting down with the delegate to discuss three fixed proposals:

1. $75 raise;

2. Basic wage of $700 and

3. To discuss immediately before we are in the bargaining of the agreement with relation to:

    a. re-evaluation of job openings

    b. needs of the organization.

Leopoldo states that there is no contradiction.

Víctor Santo Domingo indicates that to February the contingency expenses have not been used. Leopoldo affirms that we have not taken from that entry.

Víctor: "I wish to say, let it not be said here later that it is taken from the contingency expenses and that they have already

been spent. I don't want to be told later that we went over the budgeted expenses.

Leopoldo says that the contingency expenses were used on Hugo, but $9,000 of the 13,000 which was spent was recovered.

Motion by Manuel Boígues to the effect that the employees' raise be up to a maximum of $75 retroactive to July 1, 1989. Motion passes.

Motion by Renán Soto to the effect that the basic wage of the employees be raised to $700. Juan Camocho is opposed. The vote is taken: 4 in favor, 2 against. 2 abstentions. Motion passes.

Lunch recess.

II. Continue discussion Report of Organization:

Letter of Professor Wilfredo Cortés Rodríguez is read where he certifies that the one who has him informed of the case is Mildred Santiago and not Cheo as the latter had reported. Besides this he commented that the president called him to convince him that she had been with Cheo to work on his case and that he is willing to support that information.

Renán suggests that they discuss in the order we saw them in: Gilbert, Iván and Cheo.

Jesús has something to say of a general nature. His position is that he hasn't the slightest doubt that the fellow-members had failed in their functions. The fellow-members do not convince him with the explanations they gave him. But he feels that given the political situation at this time the wisest decision at this time would be to take a report to the Board of Directors without this implying that we are making certain recommendations. He is sure that at this time none of them should be suspended from their jobs. The discussion should be taken to the Board.

Juan shares fellow-member Jesús' proposal.

Víctor indicates that if he were to make the decision without using the political, he would remove all three. He believes that it is politically incorrect for this committee to fail to fulfill its responsibility to let the members of the organization of the work they failed to do. He wants the debate on the Board to

confront them with the directives. Alternatives given by Víctor:

1. Put them on probation.
2. A report to be made with the latest to have happened to send it to the membership of the area of those fellow-members.
3. To prepare a plan to go to discuss the work done by; the organizers in the district[s] with all the Federation members..

Leopoldo believes that according to the reports and what the fellow-members said there is evidence to suspend the fellow-members.

Irma shares the idea that the case be taken to the Board. She feels that the process has been corrupted because there are no elements of evaluation which places in a position of weakness, even though they admitted what Nereida brought in her report. She feels that Nereida cannot evaluate from a chair, that she has to get out of the office.

After following this discussion Lucy makes a motion that the Executive Committee after

hearing all three fellow-members feels that their work is deficient. Irma is opposed. The vote is taken: 8 in favor, 1 against; motion passes.

Motion by Leopoldo: The recommendations brought by Víctor be adopted.

Motion [by] Lucy: That the motion be divided into parts. Objection by Víctor. The vote is taken: 4 in favor, 1 against. Motion passes.

Motions by Leopoldo:

1. To require a monthly report of the Department of Organization on the work performed by the three fellow-members in their areas.

Motion adopted unanimously.

2. That a report be made to the Board of Directors and the Delegate Assembly of the work of these three fellow-members in their areas and the procedures followed by this Executive Committee. Motion unopposed.

3. That a report of the work realized by

these three fellow-workers be sent to the membership of their areas. Motion unopposed.

4. To prepare a plan in the Department of Organization of strict follow-up of these three areas. Motion unopposed.

5. That these three fellow-members be admonished for the deficiency of the work of their areas.

Jesús amends: That the Executive Committee recommend to the Board of Directors an admonishment or other measures it deems pertinent to organizers Iván Guzmán, Gilbert Rivera and José Gómez. Motion unopposed.

Irma recommends that the Extraordinary Board to discuss the case of the organizers be held before the month of April.

Motion by Víctor: For the report of Organization and Development and its attachments be approved. Unanimously approved.

Meeting adjourns at 5:00 P.M..

_____ /s/ Lucy

these three fellow-workers be sent to the membership of their areas. Motion unopposed.

4. To prepare a plan in the Department of Organization of strict follow-up of these three areas. Motion unopposed.

5. That these three fellow-members be admonished for the deficiency of the work of their areas.

Jesús amends: That the Executive Committee recommend to the Board of Directors an admonishment or other measures it deems pertinent to organizers Iván Guzmán, Gilbert Rivera and José Gómez. Motion unopposed.

Irma recommends that the Extraordinary Board to discuss the case of the organizers be held before the month of April.

Motion by Víctor: For the report of Organization and Development and its attachments be approved. Unanimously approved.

Meeting adjourns at 5:00 P.M..

/ *Lucy Sánchez*

RENAN SOTO, PRESIDENT LUCY SANCHEZ, SECRETARY

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CERTIFIED TRANSLATION — EXHIBIT XXIII

[Text is handwritten; the Translator notes that the text is lacking in proper Spanish accent marks to indicate verb tenses, etc.]

Extraordinary Meeting 3 Dec/90

Time: 10:45 am

Place: Rotary Club

Present:

Renan Soto	Luis Lopez - late
Manuel Boigues late ex.	Silvia Rodriguez
Luz E. Sanchez ex.	Jose Gonzalez late
Hayde *[sic]* Reyes late ex.	Lillian Gonzalez
Nelson Santiago	
Luz N. Arroyo	
Angel Bonilla	

Agenda

1. Work Plans 90 - 93
2. Budget 90 - 91

Renan Soto chairs this meeting when it begins Manuel excuses Jose and Lillian who will arrive later.

Renan suggests that the schedule be straight through until the subjects are over. A 30-minute recess is taken to read the documents.

I Work Plans

A. Vice President

Manuel explains that he delivered a work plan which includes his educational program since the other functions and tasks are in the regulations.

Renan makes the following observations.

1. He finds no preparation of some type of curse in parental advice.

2. That *[unintelligible]* beyond seminars organizational techniques for directors are achieved

3. The reform should go beyond seminars, some type of "educational" strategy should be sought to reinforce this work.

4. The area should be professionalized, modern techniques used.

Haydeé: She feels that a plan of activities was delivered and not a work plan. This does not correspond to what they were expecting.

Lucy: She suggests that the workers from the P.R.T.F. be sent to the seminars. Renan agrees with this because it is vital for it to be had in perspective of *[unintelligible]* of the fellow-workers from the office to our work.

Manuel tells us that on other occasions they have been invited but they do not integrate.

Renan answers him that perhaps if they see each other in a work program we can achieve that integration.

Renan indicates that there must be a training program for the Executive Committee.

Haydee recommends that this work plan be reviewed and one delivered for 3 years.

Luis tells Manuel that he should go back over the documents to bring them up to date.

Haydee make a comment in relation to it becomes almost impossible to obtain important documents because they are in the Vice-president's office.

Lucy Sanchez indicates that in her work plan it

contemplates her having prepared an area where these documents are filed in order for them to be accessible to all.

B- Secretary Curriculum & Propaganda

Renán recommends that the 25th anniversary of the PRTF be dedicated to the Federated teachers and to past members of the Executive Committee. The Secretary Treasurer indicates that the 1st Conference of Education does not say it is world-wide wherefore this implies that it could be Caribbean and perhaps Central American. This is accepted.

Manuel recommends to the person in charge of the area that the focus of the propaganda should change so that it can be more unionist.

Haydee is asked concerning the Dance activity. She indicates that it would be a small one and would be by invitation. Lillian indicates that the anniversary activities should be held by regions so that everything does wind up in the metropolitan area.

Renan recommends the creation of a Special committee for the celebration of the 25th

anniversary.

C. Secretary - Treasurer

Haydee indicates that the cultural trips should be coordinated with the Cultural Commission.

Renan indicates that priority should be given to this matter since there is great enthusiasm for this type of trip.

Luis asks if it would be feasible for us to join the summer camp project of the Coop.

Lucy Sanchez answers him that as this has to do with unionism the proposal should be submitted to the Commission of Unionism and Cooperativism and not to her.

Haydee asks what status is the matter relating to the AFT.

Renan answers her that we have to have a meeting to discuss strategies for dealing with the AFT - to see the legal and political aspects of the matter. He indicates moreover that the money is not being sent to him but that the money is being set aside.

Haydee presents a motion to recess 15 min. for them to look for copies of the regional plans.

Motion passes.

A. San Juan Region.

Luzy Sanchez indicates that in the plan the activities and objectives got mixed together.

Haydee tells Silvia that for the regional publication there should be some coordination with her office but the publication would not be assigned to its expense item.

Fellow-member Silvia is told to write her plan in such a way that she separates the objectives form the activities.

Luis explains that the representatives from Caguas, Arecibo, Mayaguez, Humacao, and he met and made a single plan.

Lucy proposes that they can have things in common but they aren't told how they are going to achieve these things in each region if each district has its peculiarities. She recommends that each of them make a plan for each region.

Nelson explains that when they began they had no on the job experience. At the time the plan was made they didn't have the knowledge of the situations of the locals. They decided to make

a plan when *[text repeats:]* They decided to make a plan when they still didn't know how the work would be in the regions, for which reason they did it in a general fashion.

Manuel: What Nelson is saying is a reality because they would come to do certain unknown functions. They should be given an opportunity to create a work plan in unionist terms, progagandistic, service-oriented, activities of struggle and militancy, etc.

Jose wants to make the proviso that he sent a letter to the members of the boards of directors for them to send him suggestions to integrate into the work plan, but they only brought to his attention the situation of the attorneys and matters relating to opening an office in Arecibo.

Renan then indicates that the general assertions which have already be delivered be accepted so that the specific plans can be delivered later. There was no opposition to this.

Luz Arroyo makes a motion for schedule review. Luis raises a question of order because the

subject has not been exhausted.

Renan declares him to be right.

Lillian asks about the date of delivery of their regional plans. Renan answers her that it would be on December 12, 1990.

Haydee makes a motion to recess for a half-hour for lunch. Motion passes.

E. Ponce Region

Haydee recommends they restructure the objectives to be regional.

Sylvia congratulates him for having turned in a good work plan.

Lucy Sanchez makes a motion to approve the work plans discussed with the due recommendations. They are unanimously approved.

II Budget 1990 - 91

The Secretary Treasurer presents the budget for fiscal year 1990-91, explaining all the items. Standing out in the budget is the fact that it recommends: 1) a $50 increase for transportation and $40.00 for per diems for members of the Executive Committee and Functionaries; 2) to allot $300.00 in

transportation to the Administrative Coordinator; 3) to pay .75 per member to the legal plan which would leave .25 to be utilized for the Defense Fund and Solidary Assistance.
Sylvia recommends a item be made for the expenses of the regional representatives.
In addition she indicates that direct payments should be included in income.
Haydee recommends the question relating to wage policy be discussed on an Executive Committee.

Renan suggests that the questions relating to wage policy, vacation time, sick leave, overtime, absences, conditions and benefits of the functionaries be discussed in January.
Lillian suggests that ways be sought out for the locals to generate funds.
Silvia makes a motion to approve the budget with the recommendations made. Motion passes unanimously.

Motion to adjourn at 5:45 p.m. Motion passes.

Signed by Luz E. Sanchez

Secretary Treasurer

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